

LAW – MADE IN GERMANY

YOUR DIRECT ACCESS TO GERMAN LAW

GLOBAL
EFFECTIVE
COST-EFFICIENT



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Foreword



‘Made in Germany’ is not just a quality seal reserved for German products, it is equally applicable to German law. Our law protects private property and civil liberties, it guarantees social harmony and economic success.

In the age of economic globalisation, law is an important competitive factor. German law forms part of the system of codified law that has evolved throughout continental Europe. This law is predictable, enforceable and affordable. Our legal codes strike a fair balance between different interests and provide just solutions. Our law is accessible to all citizens, as justice must not be allowed to depend on wealth. It is said that if you are in the right, you must also be found to be right. An effective and highly qualified judiciary ensures that German courts decide quickly and that their decisions are enforced. Because good law, too, is law that resolves each case with binding effect in reasonable time. In the interest of a well-functioning judiciary, we also take advantage of the opportunities provided by digitalisation.

German law has a long tradition and has demonstrated its effectiveness in difficult times. After the Second World War, it was German law that helped facilitate the ‘economic miracle’ in West Germany. After the fall of the wall, German law assisted in the transformation of East Germany. Germany is a social, democratic, federal republic. In large measure, we owe this success to our law. Anyone choosing continental European – German – law today, is making a wise choice, as law ‘Made in Germany’ has proven its worth.

Christine Lambrecht
Federal Minister of Justice
and Consumer Protection

Germany is one of the world's foremost economic powers. German products enjoy an excellent reputation the world over, with '*Made in Germany*' being an internationally recognised seal of quality.

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Law – Made in Germany

Global, effective, cost-efficient

■ Germany is one of the world's foremost economic powers. German products enjoy an excellent reputation the world over, with 'Made in Germany' being an **internationally recognised seal of quality**. German law contributes significantly to this success: It is more efficient, cost-effective and in important respects more predictable than other jurisdictions – good reasons for investing in Germany.

German law assures the ideal operating environment for your company. Legal certainty and a preventive approach are key features that avoid later disputes and minimise risk, thus saving a lot of money.

Germany offers entrepreneurs and investors alike a highly efficient legal system. Courts and private arbitration tribunals are able to focus on their core functions. **Efficient rules of procedure** enable a swift, competent and predictable decision-making process. Under German law, **filings in the commercial register and land register** carry authoritative weight that provides **security in framing contractual relations**. They mean you can be sure about a person's authorisation to represent a company or about ownership of a property, without the need for expensive insurance or ownership searches. Once you have obtained an enforceable title (by way of court order, settlement in court or executory deed), you can avail yourself of Germany's well-established enforcement laws and use the official enforcement services. They will ensure that you are able to consistently assert your rights.

German law assures the ideal operating environment for your company.

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The United Kingdom's exit from the EU on 31 January 2020 and thus from the common European Union's (EU) Area of Freedom, Security and Justice (AFSJ) further enhances the importance of Germany as a legal centre. Many procedural rules that have been harmonised across the EU will presumably no longer apply in the United Kingdom after the end of the transition period. Decisions made there will cease to be readily enforceable in the European Union, and vice versa. Companies that have previously chosen English law or London as the forum for dispute resolution in contracts therefore have an alternative in Germany with its very good legal framework.

As an entrepreneur, you need highly qualified staff, efficient public administration, a functioning education system and the requisite infrastructure, such as roads, railway stations and airports. Most importantly, you need a functioning and predictable legal infrastructure. Germany more than meets all of these requirements.



Legal certainty



■ Along with most other European jurisdictions, German law belongs to the long-standing family of continental European legal systems in the tradition of Roman law. This also includes the legal systems of Central and Eastern Europe. A defining feature of this legal family is a codified, meaning a systematically compiled and arranged set of laws. It may even provide the basis, in the medium to long term, for a systematisation and harmonisation of European civil law. Much of contract law is already harmonised throughout the EU. Codification provides legal certainty, as legislation contains general principles and guidelines and defines the terminology used. German law provides general catch-all provisions that apply in cases where contracting parties have not agreed otherwise. Contracts under German law are consequently not only **more concise**, they are also **more cost-effective** and **reliable** than contractual agreements under English or US law.

Codification – an outstanding cultural achievement with economic benefits

Codification, meaning the systematic compilation and regulation of a specific field of law, is a time-honoured tradition. The legislator provides the basic structure, leaving contract drafters and courts to focus on the essential details on a case-by-case basis.

Codification enables **swift and straightforward access to the law**. It makes it easier to identify and gain a rapid understanding of relevant case law. Commentary on court decisions is classified in the legal literature under the name of the applicable codified law. In this way, the various bodies of law are given systematic coverage so that users of the law can quickly and easily determine the legal position.

Contract law

Customised solutions



■ Contract law in particular benefits from the division of functions between legislator and the users of the law. As opposed to jurisdictions based on case law, codification provides reliable guidelines when drafting and interpreting contracts. The basic structure of a **contract of sale** is prescribed by law. However, in keeping with the principle of contractual freedom, the parties are of course free to agree on different provisions. In contrast to English law, a contract under German law requires no detailed provisions and definitions on

issues such as right of retention, set-off or assignment. Unless a contract expressly stipulates otherwise, the statutory provisions apply. German contracts of sale are therefore **considerably more concise** than comparable contracts under English law, saving both parties valuable time and substantial legal fees.

The United Nations Convention on Contracts for the International Sale of Goods (CISG), which has been ratified by almost all major industrial and commercial na-

The German law on sales is contemporary, dependably fulfilling the needs of international trade.

tions, applies to international **contracts for the sale of goods**. The CISG is strongly influenced by continental European legal principles and therefore meshes particularly well with German law. No other member state of the UN Sales Convention has passed more court decisions on matters under this Convention than Germany. These decisions are often cited by other countries.

The German law on sales is contemporary, dependably fulfilling the needs of international trade. The **contract of manufacture**, which is regulated in great detail in the **Civil Code (BGB – Bürgerliches Gesetzbuch)**, provides clear rules for the contract drafter, taking into account the interests of both parties. These rules span the entire contractual process, from order placement through to acceptance of the completed work, to any defects that may subsequently emerge. Accordingly, a valid contract of manufacture under German law does not need to be lengthy in order to provide stipulations for all relevant issues. Legal advisory services can therefore focus on the material points. Time and cost savings are a welcome side effect.

EXAMPLE: A British Ltd. wishes to set up a distribution network in Germany in order to offer its medical devices to hospitals and doctors.

As with a domestic company, a foreign company can likewise engage one or more **commercial agents** for the distribution of its products. Commercial agents are independent entrepreneurs who act on behalf and for the account of their principal. Their responsibilities are set forth in detail in the **Commercial Code (HGB – Handelsgesetzbuch)**. Indeed, in view of its efficiency, the German Commercial Code served as the template for European harmonisation in this field of law. Accordingly, the British Ltd.'s commercial agency contracts can be limited to the essentials. In fact, a 2-3 pages contract may be all that is needed, ensuring efficient and cost-effective contract drafting.

Company law

Finding the most favourable legal form for your company



German company law also offers a suitable legal structure for every type of business. A distinction is made between **partnerships and corporations limited by shares**. As an entrepreneur, you can select the most suitable legal form, depending on the objects of the company, the intended role of your shareholders, the flexibility required for the structuring of the articles of association and tax-related criteria.

The most important form of partnership in practice is the **GmbH & Co. KG**. This is a limited partnership (KG – *Kommanditgesellschaft*) with a private limited company (GmbH – *Gesellschaft mit beschränkter Haftung*) as a general partner. It combines the advantages of limited liability with a flexible, tax-transparent partnership structure. The two main types of incorporated company are the GmbH and the *Aktiengesellschaft* (AG), or public limited company. The **GmbH** is specifically designed to meet the requirements of small and medium-size companies. The shareholders are largely free in their choice of articles of association, so that a customised solution can be designed, tailor-made to meet the individual needs and requirements. The

articles of association do not need to set out every single detail, as the Private Limited Companies Act (*GmbH-Gesetz*) contains catch-all provisions. In straightforward cases, the articles of association are consequently no longer than one or two pages.

Companies based in Germany and their legal form

Germany has over 1.2 million GmbHs and about 260,000 limited partnerships (including GmbH & Co KGs). More than 150,000 entrepreneurs are registered as sole traders. Approximately 15,000 companies opted for the legal structure of a public limited company (AG).

Because a civil law notary has to be involved in the formation of a GmbH and in the registration of any changes in the shareholder structure, the identity of shareholders can be reliably verified and viewed online in the commercial register (*Handelsregister*) at any time. The electronic commercial register removes the need for time-consuming research in order to find out the real sharehold-

German law places great importance on the accuracy and transparency of shareholder resolutions.

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ers, and transaction costs on transfers of shares in a GmbH are low by international standards. German company law is continuously being adapted to the needs and requirements of business, industry and trade. The electronic commercial register also means that a GmbH can be quickly and efficiently incorporated and brought into operation. GmbHs incorporated in Germany can also operate abroad, as with the uniformly structured European sales subsidiaries of a group. In addition to the GmbH, there is also the *Unternehmer-gesellschaft (UG) (haftungsbeschränkt)*, which literally translates as “entrepreneur company (limited liability)” and is also referred to in German as a “*Mini-GmbH*”. An *UG (haftungsbeschränkt)* can be incorporated with a share capital upwards of one euro and is primarily the vehicle of choice for start-ups with low initial capital who previously opted for the English Ltd.

More exacting statutory requirements apply for **public limited companies (AG - Aktiengesellschaft)** and especially for those listed on the stock exchange. This means that the capital markets can count on reliable transparent structures. The powers and competencies of the exec-

utive bodies and shareholders are largely prescribed by statute. Any deviation from the Public Limited Companies Act (*Aktien-gesetz*) can be found in the respective articles of association that are accessible online via the electronic commercial register. The legal form of a public limited company (AG) is designed for large capital market-oriented companies. German law places great importance on the accuracy and transparency of shareholder resolutions. As a consequence, such resolutions often require notarial recording. In court, these records are irrefutable proof of the precise order of events at shareholder meetings, as the courts are bound by the determinations made by the civil law notary. Similarly, the notarially recorded minutes serve as the basis for entry in the electronic commercial register.



The German registers

Reliable data for real estate and commercial law



■ A unique selling point of the German legal system is its **public registers** maintained by judges and registrars (*Rechtspfleger*), which ensure legal certainty in the areas of commercial law and land law/conveyancing. In fact, this is a particular feature of the German legal system that other countries strive to emulate. A reliable dataset is available to both German and foreign investors, forming the basis of any commercial activity. In Germany, register courts and civil law notaries ensure the security and reliability of the data held in public registers. Both ensure the professional and speedy processing of applications to the register. In urgent cases, entries – such as the formation of a GmbH – can be effected within 24 hours.

The **commercial register** provides reliable information on sole traders and trading companies and on the persons who can validly represent them in legal transactions. Anyone can inspect the commercial register online at www.handelsregister.de. This means you can very quickly find out with legal certainty if a trading partner is a genuine entity, and who is authorised to represent and sign for it, without needing an expensive legal search for the purpose.

The German commercial register is also technically secure. All communications with the register take place electronically, resulting in efficient and speedy workflows. All documents filed with the register (including articles of association, transformation agreements, lists of shareholders and so forth) are available online and can be viewed for 1.50 euros.

Registers as a cost advantage

In jurisdictions that do not have reliable registers, lawyers are usually required to verify the power of representation within companies and attest to their findings by way of legal searches. In the US, for example, the costs of these services alone can easily run into five-digit dollar amounts. In Germany, an extract from the commercial register costs just 4.50 euros.

Land registers record properties on German territory. They provide information on the ownership of properties, including owner-occupied apartments, and on any encumbrances. The German land register (*Grundbuch*) can be accessed

Partly thanks to the efficiency of the land register, property transaction costs are very inexpensive in Germany by international standards.

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and consulted by anyone with a legitimate interest, who can obtain information from it online. In contrast to other countries, the content of the land register is indefeasible. This ensures transparency and maximum security and reliability in property transactions. A buyer can rely on the information in the land register. An extract from the land register, which can be viewed online for 8.00 euros, e.g. in connection with a real estate transaction, contains information on the property (description), the owner and any other beneficiaries, and encumbrances. Other than in the USA, for example, buyers do not additionally need expensive title insurance. Partly thanks to the efficiency of the land register, **property transaction costs** are very **inexpensive** in Germany by international standards, as shown among other things in a study by Professor Peter L. Murray of Harvard University (“Real Estate Conveyancing in 5 European Union Member States: A Comparative Study”).

Not only can the commercial register and the land register be viewed online in Germany: **legal communications** between civil law notaries and register authorities are also increasingly handled **electronically**. E-justice enables rapid and efficient exchange of digital documents in compliance with the highest standards of security. Commercial register and land register filings can thus be made with real-time document submission. In the right circumstances, this means a newly launched company can be recorded in the commercial register within just one day. To speed up the registration process in commercial registers and land registers, civil law notaries additionally prepare and provide the courts with structure data for automated processing of a filing. The data can be read out by the courts and used directly (effectively at a mouse click) to complete the filing process.

As a result of **register certainty**, criminal manipulations such as falsified entries, identity theft, mortgage fraud or real estate theft, which often occur in other

highly developed industrial nations, are inconceivable in Germany. No one has to worry about their data held in court registers being manipulated or misused.

Secure registers as a locational advantage

The economic benefits of secure registers are particularly apparent when taking a look at countries without comparable registers: The FBI, for instance, reported that the US real estate market has regularly been suffering billion-dollar losses over the past few years as a consequence of mortgage fraud and identity theft.

Financing

Legally certain, efficient and flexible



■ Anyone running a business usually requires third-party financing. Lenders, however, require collateral. The German legal system provides a strong framework for efficient, cost-effective and legally certain lending.

EXAMPLE: A company owns a property in Cologne. It plans to take out a loan to extend its premises. The property is to serve as collateral for the bank.

Whoever is registered in the land register as a **mortgagee**, or as a beneficiary of a **land charge (*Grundschild*)**, does not have to worry about the borrower becoming insolvent. Such a creditor can realise the property, taking priority over all other creditors. This protection has a binding effect on everyone. For this reason, the land register enables banks in Germany to **grant real estate loans** at particularly favourable terms and much lower interest rates for mortgage loans than are available in many other countries. Long-term mortgage loans are exceptionally successful in Germany. At present, a credit volume totalling some 1,317.6 billion euros is secured via mortgages or land charges registered in the land register. The banks

pay out mortgage loans immediately once the application for registration of the mortgage or land charge has been received by the land registry and provided that there is no obstacle to registration with the correct ranking; this can be confirmed, easily and quickly, by way of a notarial certificate.

Finally, banks have an internationally recognised, legally exceptionally secure refinancing instrument in the form of the **Pfandbrief**. A Pfandbrief is a bond issued by a Pfandbrief bank. Its main feature is the fact that the investor does not have to rely on the credit rating of the issuing bank alone, but is – in the event of an insolvency of the issuing bank – also secured by a pool of cover assets (*Deckungsmasse*) of mortgages or public sector loans, which is reserved for the Pfandbrief holders.

In Germany, efficient financing solutions in trade and commerce are also created through flexible structures for **providing collateral security**.

Security by transfer of ownership and retention of title secure the lender, even though the lender is not in possession of the item in question.

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EXAMPLE: A German GmbH requires a bank loan in the amount of one million euros as interim finance. The bank is prepared to grant the loan provided that the GmbH makes available its production machinery as collateral.

In this case, the bank will be granted **security by transfer of ownership** of the production facilities. Although the bank becomes the legal owner of the production facilities, the GmbH remains in possession of the facilities and can continue using them for production. From the bank's perspective, it is of critical importance that it can access the machines before any other creditors, should the GmbH become insolvent.

Security by transfer of ownership (*Sicherungseigentum*) and retention of title (*Eigentumsvorbehalt*) secure the lender, even though the lender is not, or no longer, in possession of the item in question. German law is significantly more flexible and efficient in this regard than other legal systems, which make security interests conditional on possession.

Furthermore, German law permits the **assignment of receivables as security**.

EXAMPLE: A GmbH sells medical devices and requires a bank loan. The bank is prepared to grant the GmbH a loan if the GmbH, in turn, assigns its receivables from the sale of its devices as security to the bank.

In this case, GmbH's purchase price claims are assigned to the bank to collateralise the bank loan. In relation to its customers, the GmbH continues to act as usual. However, in the event of the assigned claims being realised, the bank may disclose the assignment and request payment to itself. In this scenario, the bank's security interest takes priority over all other creditors.



German courts

Independent, fast and cost-effective



Germany is justifiably proud of its courts. For many years now, international studies and empirical data have attested that Germany offers an efficient court system committed to due process and the rule of law. This system has set worldwide standards. Thus, the German judiciary as the third power of the state provides an excellent framework for doing business.

German judiciary – independent in its rulings

Everyone litigating in Germany can rely on the independence of German courts. Corruption within the judicial authorities is not an issue in Germany. Germany is among the top 10 nations in the Rule of Law Index 2020 published by the World Justice Project, which has investigated the rule of law in 128 countries since 2008.

As is the case with substantive law, German procedural law is also systematically and clearly structured in the form of codes. The Code of Civil Procedure (ZPO – *Zivilprozessordnung*) governs civil pro-

ceedings and therefore provides the foundation for the work of both judges and lawyers.

Germany uses its **judicial resources very efficiently**. In most cases, litigation is not necessary, as the contract drafting stage acts as a form of legal control. German lawyers and civil law notaries, who provide **competent** and pro-active advisory services, significantly contribute to relieving the courts of some of their burden and thus to the proper functioning of the courts. Germany is among the European countries with the lowest litigation rate relative to its population and gross domestic product. A further factor contributing to the predictability of German civil suits is **German liability law**. As opposed to US courts, German courts do not award extremely high damages. Similarly, the concept of punitive damages is alien to German law, which instead strives to compensate for any actual loss or damage incurred. As a result, the **risk involved in any litigation is both predictable and quantifiable** for you as a business.

In the German civil trial system, the judge actively steers the proceedings. This facilitates the **efficient conduct of the proceedings**, while maintaining a focus on decisive issues.

Access to justice as a hallmark of a functioning state governed by the rule of law

Germany holds fourth place in the Civil Justice category of the Rule of Law Index 2020 published by the World Justice Project. Access to the courts, their effectiveness and efficiency, their independence and impartiality as well as the absence of corruption are hallmarks of the German rule of law. In contrast, the UK is ranked no. 17, while the US came in at no. 36.

The court is responsible for the **structure and organisation of the proceedings**, including the service of the statement of claim, written pleadings and court decisions. The court also summonses ordinary witnesses as well as expert witnesses. For a witness to be summonsed, the court must be satisfied that the witness's testimony is necessary in order to decide the case – there are no 'fishing expeditions'. German Code of Civil Procedure does not feature an expensive discovery process. If and when required, the court can enforce the attendance of witnesses by subpoena. Compared to other jurisdictions where counsels of the parties are required to perform all of these costly and time-consuming organisational tasks, the German approach significantly accelerates court proceedings.

Moreover, the courts also actively manage and structure the proceedings during the actual hearings. As early as at the first hearing, the matter at hand is discussed with the parties and their lawyers, with the judge providing **guidance as to the issues that he or she considers relevant**. This enables the parties to adapt their litigation strategies, saving both

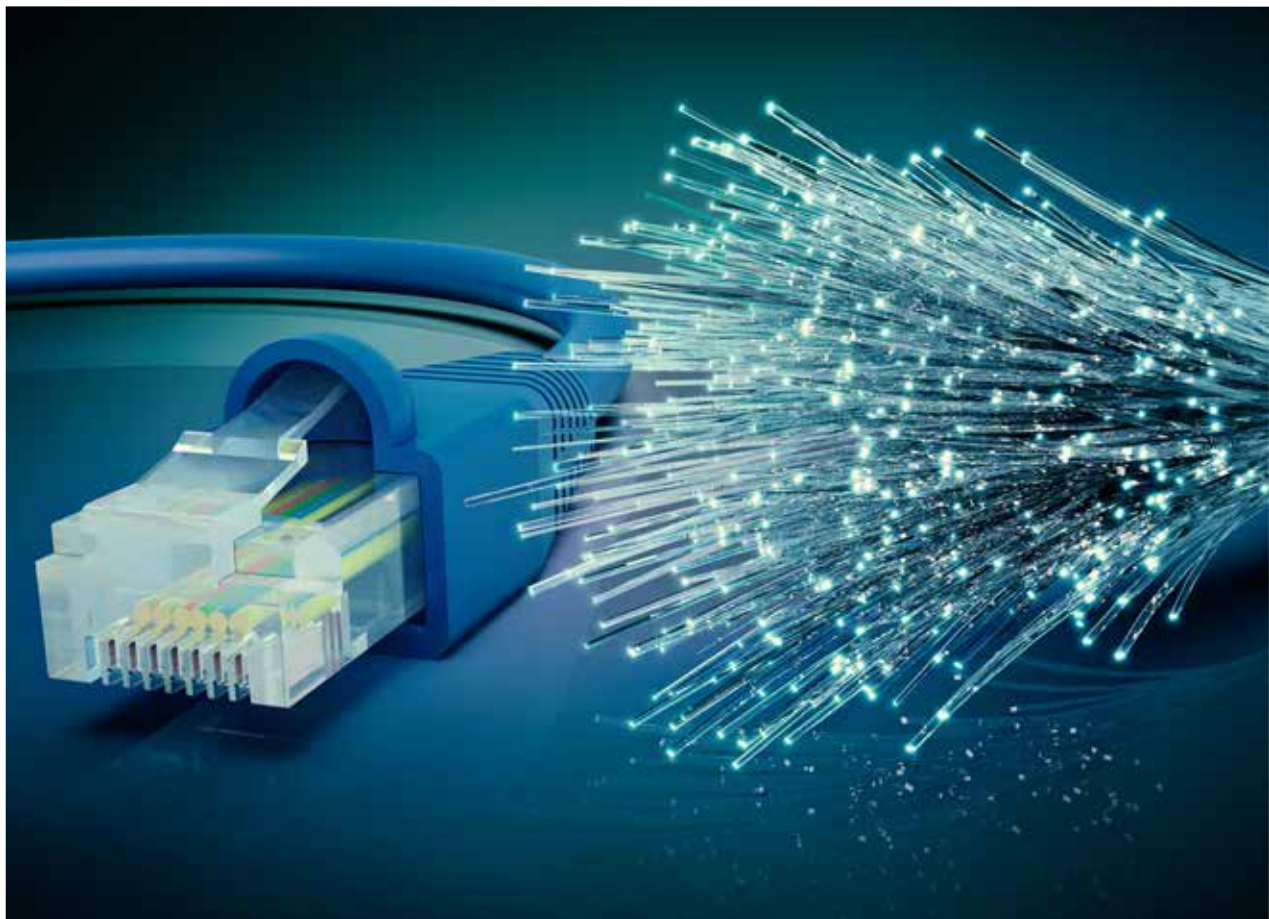
time and money. As a party to a lawsuit in Germany you are – in contrast to many other jurisdictions – largely protected from any unpleasant surprises.

To ensure that you always have access to **judges with subject-matter expertise**, civil courts in Germany have **specialised divisions** for certain areas of the law, such as construction and architectural law, intellectual property law, corporate, capital market and banking law, and insurance law. In an increasingly large number of locations, there are specialised divisions for international commercial matters that provide the option of conducting litigation in English. For major commercial and international cases, there are also plans to establish commercial courts. In this way, companies benefit from effective conduct of the proceedings in their accustomed language of business. However, even though the court ensures efficient conduct of the proceedings, as the **plaintiff**, you remain ‘**master of the proceedings**’ every step of the way, in that you and your lawyer alone determine the subject matter of the suit via the petitions and motions filed.

Court decisions after only three months

German courts work very quickly and efficiently: Almost fifty percent of all proceedings before the local courts (*Amtsgerichte*), who have authority to hear matters having a value in dispute not exceeding 5,000 euros, are concluded within three months. At regional courts (*Landgerichte*) (value in dispute exceeding 5,000 euros), more than a quarter of cases are concluded within three months and over 20 percent in no more than six months.

E-justice



The use of e-justice helps speed up litigation and cut costs.

■ The use of e-justice helps speed up litigation and cut costs. The German judiciary is gradually introducing electronic case files and **digital communication** in such a way that it preserves the courts' independent way of working while providing high security. By 2022 at the latest, lawyers (*Rechtsanwälte*) and public agencies will communicate exclusively electronically with the courts and prosecution services. Under the framework of the legal profession's self-administration, the German Federal Bar (*Bundesrechtsanwaltskammer*) is required by law to provide each lawyer with a special electronic mailbox. These mailboxes enable all lawyers to take part in e-justice and to send and receive messages and documents to and from the courts and public agencies as well as other independently practising lawyers and corporate in-house lawyers.

Since 2016, there has been a central electronic register of protective briefs for the civil and labour courts. Protective briefs

(*Schutzschriften*) are a precautionary defence against impending injunction filings and can be filed with the register via a lawyer's electronic mailbox. E-justice **further speeds up court proceedings** and, by means such as the exchange of structure data, facilitates the correct sorting of inbound mail to court and lawyer files.

Law of evidence

Efficiency through intelligent rules of evidence



Disputes in courts not only centre around legal questions but, first and foremost, around **questions of fact**.

EXAMPLE: A GmbH wishes to cancel the purchase contract for a printing press. It asserts that the vendor misled it about the press's energy consumption at the contract negotiation stage. The defendant denies this.

The manner in which a legal system organises and regulates the taking of evidence is of critical importance to the cost and duration of lawsuits. Here again, German law proves to be particularly efficient and predictable in this regard. In steering the proceedings, the court first of all ensures that the parties state their case in full, specifying the evidence they intend to present. The way is then prepared for the actual taking of evidence by **orders of evidence** regarding those facts requiring clarification. Furthermore, **carefully balanced rules of evidence** distribute

the burden of proof between the parties. As a rule, each party is required to prove any facts that are advantageous to its claim or position. The taking of evidence over several weeks, as is commonplace in other jurisdictions, are virtually unheard of in German civil proceedings.

No unpredictable cost risk through pre-trial discovery

As opposed to procedural law in the US, German law does not provide for pre-trial discovery prior to the commencement of the actual trial. The parties are therefore not required to enter into a comprehensive exchange of any and all documents and records that may have a bearing on the proceedings. Thanks to its sophisticated rules of evidence, German law is able to dispense with all such preliminary proceedings without compromising the legal process. This saves both time and money.

For the purpose of substantiating evidence, litigation parties and courts in Germany can rely on a pool of over 8,000 publicly appointed and sworn expert witnesses in some 250 areas of expertise. These are personally and professionally highly qualified individuals who are also very familiar with the requirements of judicial proceedings. Their qualification is monitored on an ongoing basis by public bodies – primarily the Chambers of Commerce and Industry (IHKs – *Industrie- und Handelskammern*). The latter provide a national directory of such expert witnesses that can be accessed online. Moreover, the ability to furnish **documentary evidence (*Urkundenbeweis*)** further increases the efficiency of the taking of evidence. As with all other continental European jurisdictions, German law also recognises documentary evidence in addition to evidence by witness testimony. In fact, documentary evidence carries a particular weight and is actually more compelling than evidence given by witnesses.

The deed

Fast-track enforcement of your rights



■ A **notarial deed (*notarielle Urkunde*)** is the fastest and easiest way to obtain execution against a debtor in default. It requires the debtor to have submitted such a deed to immediate execution. This usually takes place with contracts for the sale of property or for the sale of shareholdings, and with formal acknowledgements of debt to secure loans. If the debtor fails to pay, the creditor can use the deed to execute immediately by, for example, seizing accounts, properties or shareholdings belonging to the debtor. The creditor thus does not need to pursue court action leading to a judgment against which the creditor can execute. In addition, there is the possibility of pursuing an *Urkundenprozess* – proceedings on claims arising from a deed. The court is specifically required to fast-track such

proceedings. Deed actions **have priority and must be scheduled exceptionally quickly**. This means that if a claim can be evidenced by (notarial or non-notarial) deeds – such as a deed of guarantee – an executable judgment can often be obtained in a matter of weeks. That is particularly helpful if there is a risk of the debtor becoming technically insolvent or formally filing for insolvency.

Injunctive relief and
provisional enforceability
Rapid judicial relief



There is hardly any other procedural system that provides a similar low-cost solution for the fast enforceability of judgments.

■ Situations may arise where **quick action** by the courts is of paramount importance to protect your financial or commercial interests.

EXAMPLE: A competitor uses a near-identical copy of a company's corporate logo in order to generate orders.

In these cases, injunctive relief provides focused and effective help. In the majority of cases, the court will decide whether the requested relief is granted the same day that the application for injunctive relief is received or, at the latest, a few days thereafter. The decision is then served and enforced without delay. Particularly where breaches of competition law or patent infringements are concerned, the courts respond very quickly – a decisive advantage that other jurisdictions only offer to a very limited extent, if at all.

Final judgments that can no longer be appealed are enforceable. However, the courts usually declare judgments to be provisionally enforceable, even when they have not yet become non-appealable. The prerequisite for provisional enforceability is that the prevailing party furnishes security – usually in the form of a bank guarantee – in order to safeguard the losing party's position. Such security is not even required in proceedings for injunctive relief and summary proceedings. There is hardly any other procedural system that provides a similar low-cost solution for the **fast enforceability of judgments**.

Patent matters in Germany

Global leader



Germany is the **leading legal venue for patent matters worldwide**. Patent infringement proceedings are mainly conducted in Düsseldorf, Mannheim, Munich and Hamburg where divisions of the new European Unified Patent Court (UPC) are also being established. Munich is additionally home to both the German Patent and Trade Mark Office (DPMA) and the European Patent Office (EPO). It is therefore in Germany that patent decisions are made for applicants throughout Europe.

In the event of litigation before a German court regarding patent infringements, German procedural law fosters **particularly swift, cost-effective and competent** proceedings. This is partly because decisions about the **potential revocation of a patent** in Germany are the exclusive reserve of the **Federal Patent Court (*Bundespatentgericht*)** and the German Patent and Trade Mark Office (DPMA)/ European Patent Office (EPO) in opposition proceedings. In contrast, other courts involved in patent cases are, as a rule, required to proceed on the assumption

Top rank in the protection of intellectual property

According to the Global Intellectual Property Index published by Taylor Wessing in 2016, Germany ranks second in the world for the protection of intellectual property. Civil courts are largely specialised due to itinerant jurisdiction. When it comes to protection against plagiarism and product piracy, the German legal system provides for very extensive scope to assert claims compared with other countries such as the USA or the UK. The benefits just mentioned are also reflected in the numbers of cases brought. For instance, Germany is the **leading country in solving patent disputes**: Over 1,000 patent cases are heard in Germany each year – far more in total than in all other EU member states combined. Due to differing procedural principles, patent disputes cost significantly less in Germany than, for example, in the UK or the USA.

that the decision of the competent patent office to grant the relevant patent was correct. Patent holders can obtain a judgment against the infringing party, either for injunctive relief or damages, within nine to twelve months. This **'pro-plaintiff' rule** and its handling attract a large number of foreign plaintiffs. The **costs of patent proceedings in Germany** are limited. Depending on the value in dispute, which is subject to a maximum limit of 30 million euros, legal costs are reimbursable. It should be noted that German courts exercise great restraint

when it comes to fixing the value of the matter in dispute. German lawyers and judges possess an **extraordinary level of competence** in the area of industrial property rights. Moreover, German **patent attorneys** boast a double qualification, in either law and science or law and engineering.

Settlement of disputes
in or out of court
Always an option



■ In combination with the state judiciary in Germany, a wide range of different conflict resolution procedures provide the right solution for every dispute.

Already during ongoing court proceedings, judges are required under the German Code of Civil Procedure (*Zivilprozessordnung*) to act in all procedural situations in the interests of arriving at an amicable resolution. Therefore, elements of mediation and conciliation form an integral part of German civil proceedings. Many judges and lawyers have undergone additional training to become qualified mediators. In suitable cases, the court will propose that the parties enter into out-of-court settlement of disputes. In Germany, however, the parties have a genuine choice between ending a dispute by way of a court ruling or by settlement in and out of court. The costs and risks of both options are calculable and can be weighed up against each other. In contrast, due to the unpredictable costs and risks of litigation in the US, for example, parties are in practice often forced to enter into out-of-court settlements.

In the 79 German **Chambers of Commerce and Industry (IHKs – *Industrie- und Handelskammern*)**, which guarantee neutrality as public-law corporations, businesses in particular throughout Germany can have recourse – as well as to lawyers – to experienced conflict advisers who can advise on the merits and demerits of mediation, conciliation, arbitration and court proceedings. In addition, foreign-based companies receive assistance from the network of German Chambers of Commerce Abroad (AHKs – *Auslandshandelskammern*), with 140 locations in 92 countries worldwide. Particularly with regard to international business disputes, Germany's popularity as a **venue for arbitration proceedings** is continuously growing. In Germany, numerous **legal experts are specialised in the conduct of arbitration proceedings**. They possess a high level of expertise and intercultural sensitivity, thereby facilitating the settlement of disputes and the swift termination of proceedings.

Moreover, there are various **internationally recognised arbitral institutions** that provide their own procedural rules, administer proceedings and assist the

parties in the selection of suitable arbitrators. Chambers of Commerce and Industry traditionally play a leading role in alternative dispute resolution and in practice can refer parties to experienced arbitrators – including through the network of German Chambers of Commerce Abroad, some of which have their own arbitration tribunals. The German Arbitration Institute and the German Maritime Arbitration Association in Hamburg also offer their experience in arbitration in Germany. In addition, dedicated arbitration tribunals are available for disputes concerning specific commodity groups. The German rules of arbitration are modelled after the modern and internationally recognised UNCITRAL arbitration rules and afford all parties a **high degree of flexibility and legal certainty**. The parties choose the language of the arbitration proceedings and decide on the arbitrator as well as the arbitration venue. Parties in arbitration proceedings are also free to agree their own rules on evidence taking or to base the proceedings on internationally recognised rules for this purpose. This reduces the average duration of proceedings compared with other countries. Overall, German procedural law is arbitration-friendly to a large degree.

The hourly rates charged by lawyers are significantly lower in Germany than, for example, in London. As a consequence, arbitration proceedings in Germany are usually **more cost-effective** by international standards. At the same time, the relevant UN convention ensures that arbitration awards cannot just be enforced in Germany and the EU but in almost all countries around the globe.

For further information on arbitration proceedings and suitable arbitration clauses, please visit the website of the Association of German Chambers of Commerce and Industry (DIHK). (www.dihk.de/schiedsgerichtsbarkeit).

As with arbitration, a highly professional mediation and conciliation services provider segment has emerged in Germany.

Mediation and **conciliation** are gaining in importance in Germany as forms of out-of-court settlement of disputes. It is a suitable option if the parties seek a sustainable solution and are willing to resolve the conflict, as they see fit, with the help of a mediator or conciliator. Such proceedings allow fast and cost-effective resolution especially in international business disputes. If no agreement is reached, it still remains possible to move on to court or arbitration proceedings. Mediation can also be incorporated into proceedings that are already underway. As with arbitration, a **highly professional mediation and conciliation services provider segment** has emerged in Germany. The Chambers of Commerce and Industry as well as the German Chambers of Commerce Abroad assist companies, both in Germany and abroad, in finding suitable commercial mediators. Like mediators from the legal profession, they sometimes also carry out mediation proceedings autonomously.

Court fees and lawyer's fees
Transparent and affordable



■ As a plaintiff in Germany, you are required to advance the court fees and, if required, your lawyer's fees. The defendant, on the other hand, only has to advance his own lawyer's fees. As court and lawyer's fees are prescribed by law and are always based on the value of the matter in dispute, legal costs **can be calculated** from the outset.

EXAMPLE: In a legal action before a civil court of first instance, the plaintiff may be faced with the following costs:

**Value of the matter in dispute:
500,000 euros**

Court fees: 10,608 euros
Own lawyer's fee: 8,052.50 euros
(excl. VAT)

**Value of the matter in dispute:
5,000,000 euros**

Court fees: 59,208 euros
Own lawyer's fee: 41,802.50 euros
(excl. VAT)

**Value of the matter in dispute:
10,000,000 euros**

Court fees: 113,208 euros
Own lawyer's fee: 79,302.50 euros
(excl. VAT)

Disbursements for both ordinary witnesses and expert witnesses may be added to the above costs, including travel expenses and loss of earnings for ordinary witnesses and the standard professional fees for expert witnesses.

The party who wins the litigation proceedings will have any costs incurred during the court proceedings reimbursed by the losing party. These costs include any court fees advanced and any advance payments made for witnesses (both ordinary and expert) as well as the fees for the lawyers of both parties.

Germany ranks fourth for civil justice in the Rule of Law Index 2020. **Reasonable and predictable lawyers' fees** in Germany are a key factor in this. Access to justice is therefore ensured, independent of the financial situation of the individual seeking its protection.

The experts in German law
Lawyers, civil law notaries and judges



■ In Germany, you have access to highly qualified legal experts who are proficient in several languages and have a good understanding of other legal systems, gained during the course of extended stays in the relevant countries. For your individual and professional legal advice, lawyers (*Rechtsanwälte*) and civil law notaries are at your service.

Lawyers (*Rechtsanwälte*) practice as a liberal profession comprising an independent body in the administration of justice. They provide comprehensive legal advice and are entitled to act on your behalf before all courts and in relation to all government authorities. By representing and asserting their clients' interests, they play an important role in access to justice. A distinguishing feature of the German legal profession is the possibility of acquiring the title of *Fachanwalt* in a specific selection of fields. *Fachanwälte* are *Rechtsanwälte* who are able to demonstrate special theoretical knowledge and practical experience in a certain subject area. The acquired title of *Fachanwalt* for a specific field makes it easier for you to find a lawyer to suit your case on the basis of objective criteria.

Civil law notaries are officials and are therefore appointed by the ministry of justice of the respective federal state. Focusing on the precautionary administration of justice, they are independent and sworn to impartiality. In the interest of all the parties involved, civil law notaries ensure the balanced drafting and execution of enforceable contracts, which they also record.

Judges make their decisions impartially and neutrally. They are bound solely by the law. They direct the course of the proceedings and ensure the fast and effective administration of justice.

Your direct access to German law

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Bundesnotarkammer

Mohrenstraße 34
D-10117 Berlin
Tel.: +49 (0)30-3838660
Fax: +49 (0)30-3838666
bnotk@bnotk.de
www.bnotk.de/en

Bundesrechtsanwaltskammer

Littenstraße 9
D-10179 Berlin
Tel.: +49 (0)30-2849390
Fax: +49 (0)30-28493911
zentrale@brak.de
www.brak.de

Deutscher Anwaltverein

Littenstraße 11
D-10179 Berlin
Tel.: +49 (0)30 7261520
Fax: +49 (0)30 726152190
dav@anwaltverein.de
www.anwaltverein.de

Deutscher Industrie- und Handelskammertag e.V.

Breite Straße 29
D-10178 Berlin
Tel.: +49 (0)30-203080
Fax: +49 (0)30-203081000
info@dihk.de
www.dihk.de

Deutscher Notarverein

Kronenstraße 73
D-10117 Berlin
Tel.: +49 (0)30-20615740
Fax: +49 (0)30-20615750
kontakt@dnotv.de
www.dnotv.de

Deutscher Richterbund

Kronenstraße 73
D-10117 Berlin
Tel.: +49 (0)30-2061250
Fax: +49 (0)30-20612525
info@drb.de
www.drb.de

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Please contact the business office of the “Law – Made in Germany” initiative at
zentrale@brak.de if you have any questions or suggestions.

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BUNDERECHTSANWALTSKAMMER


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