Country Guide
Germany

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Doing Business in Germany

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Contents

Overview

A Q&A guide to doing business in Germany[1]

These Q&A provide some general facts on doing business in Germany and give an introduction to selected aspects of the tax and legal system, in particular with respect to foreign investments and their specific restrictions and liabilities. The answers also summarise, among others, laws on data protection, employment relationships, including on redundancies and mass layoffs, environment, intellectual property and product liability. In addition, these Q&A provide short overviews on anti-bribery and corruption laws, competition law, commercial/distribution law, corporate matters as well as on taxation and tax residency laws.

1. What is the general business, economic and cultural climate in your jurisdiction?

Economy and dominant industries

According to data by the International Monetary Fund and the World Bank, in terms of gross domestic product, Germany's economy is the largest in Europe and the fourth largest in the world. Important economic sectors are services (69%), industry (24%) and construction (6%). The automotive, commercial vehicle, electrical engineering, mechanical engineering and chemical industries are considered to be the most competitive German industry sectors worldwide. Business software and the insurance industry (especially reinsurance) are also considered to be internationally significant.

Population and language

Approximately 83 million people live in Germany (as of mid-2024). The main language used is German even though English is a language commonly understood and spoken by Germans, in particular, in a business context. Where European law is applicable, petitions and documents may be filed in court in any official or court language of any EU member country.

Business culture

In principle, in professional life in Germany, it is expected to attend meetings in time and well prepared. Discussions are businesslike, and small talk is brief. German companies are less hierarchical than in some other countries. Supervisors delegate responsibility for tasks and projects to their employees. Work and private life are typically kept separate.

[1] While these Q&A give an overview of key recent developments affecting doing business in Germany as well as an introduction to the German legal system, they are intended solely for general information and should not be construed as, or substitute for, legal advice with respect to specific matters, since such advice requires an evaluation of precise factual circumstances and often an assessment on a case-by-case basis. In addition, these Q&A might not be entirely up-to-date given changes in German legislation and more recent court decisions or rulings by German authorities. German legal counsel should be consulted as to all questions that arise with respect to the laws and other legal requirements discussed herein and otherwise potentially relevant for doing business in Germany.

2. What are the key recent developments affecting doing business in your jurisdiction?

Key business and economic events

Germany is one of the world's leading locations for trade fairs with an international focus. Some of the largest trade fairs in the world take place in Germany and across all industries there are a large number of trade fairs each year. The largest trade fair event is the international auto show IAA Mobility in Munich, which attracted more than 500,000 visitors in 2023. The fair was organized by the German Association of the Automotive Industry (VDA). In addition, the German trade associations (*Wirtschaftsverbände*), publishing houses and non-profit associations organise a number of events with a focus on their industries and related policies (e.g., conferences, economic forums, round-tables etc.).

Political events

After the Bundestag elections in September 2021, there was a change of government: Under the leadership of Chancellor Olaf Scholz (SPD), a coalition of Social Democrats, Greens and Liberals was formed for the first time in December 2021. This ended the era of Angela Merkel (CDU), who had governed the country for 16 years with various coalitions. Following the dismissal of the Federal Minister of Finance by the Chancellor, early elections are expected to be held in February 2025.

Legal system

3. What is the general legal system in your jurisdiction?

Germany's legal system is based on civil law. It consists of a legislature and an independent judiciary. Legislative power resides at both the federal (Bund) and the federal state (*Bundesland*) level. The Constitution (*Grundgesetz*) presumes that all legislative power remains at the state level unless otherwise provided. Many fundamental matters of administrative law fall within the jurisdiction of the individual federal states.

Foreign investment

4. Are there any restrictions on foreign investment, ownership or control?

In principle, the German market is open for investments of any kind. However, as set out in the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) the Federal Ministry for Economic Affairs and Climate Action (*Bundesministerium für Wirtschaft und Klimaschutz, BMWK*) has powers to review, prohibit or restrict a transaction for reasons of public order and security.

Investors from outside the European Union (EU) who acquire a certain amount of the shares and voting rights in a German enterprise, irrespective of its business, can be subject to examination by the BMWK (without necessarily being required to make a notification to it). The applicable threshold depends on the activities of the German enterprise. If it is active in certain critical infrastructures, in the development of software for critical infrastructures, in cloud computing services, the public telecommunication sector, health sector communication, government communications or prominent in the media sector, the threshold is 10%. For target companies active in the health and the emerging technologies (e.g. autonomous driving, artificial intelligence, robotics, semiconductors, satellites and space travel, quantum computing, additive manufacturing) sector, the threshold is 20%. For all other companies the threshold is 25%. In this context, an "acquisition" means both an acquisition of assets or shares and it does not matter whether the investor acquires the voting rights directly or indirectly. The calculation of the voting rights also includes third-party rights where either

the investor holds at least 10% or 20% of the voting rights in the third party; or the investor has concluded an agreement on the joint exercise of voting rights with the third party.

Deviating thresholds apply for the acquisition of additional voting rights in case the acquirer has purchased voting rights before.

Additionally, it is sufficient for the acquirer to acquire a voting share below the threshold level under certain circumstances.

Several civil sectors are partially seen as "critical" sectors. Foreign investments in these sectors may be subject to a notification requirement. This applies to non-EU or EFTA companies active in certain further defined critical infrastructures in one of the following sectors:

- Energy
- Information technology and telecommunications
- Transport and haulage
- Health
- Water
- Nutrition
- Finance and insurance
- Municipal waste disposal

In addition, the law comprises 26 further specific case groups. Companies covered by these case groups are considered "critical" and their acquisition must also be notified to the BMWK. These case groups cover companies for which the aforementioned thresholds apply, that is companies developing software for critical infrastructures, providing cloud computing services, developing and producing certain dual use products or that are active in the media, the telecommunication, the health or the emerging technologies (autonomous driving, artificial intelligence, robotics, semi-conductors, satellites and space travel, quantum computing, additive manufacturing) sectors.

If the investment falls within the scope of the mandatory notification, the law prohibits the closing of the transaction for the duration of the mandatory investment screening procedure. If the transaction is closed without BMWK's approval, the penalties are severe: imprisonment for up to five years or a fine.

If the BMWK concludes that the acquisition constitutes a sufficiently serious interference with public order or security, it can prohibit or restrict the investment within five years after conclusion of the acquisition contract. However, if the BMWK obtains positive knowledge of such an agreement beforehand, it must decide whether to initiate the examination procedure and inform the acquirer and the domestic company within two months.

To obtain prior legal certainty, an investor can apply for a clearance certificate from the BMWK. Within a preliminary examination phase of two months, the BMWK has to decide whether to issue the clearance certificate applied for or to open a formal investigation. The formal investigation may take up to four months. The BMWK may extend this four-month period by three months if the case at hand is legally or factually particularly complicated. Further, the four-month period is suspended if and as long as the BMWK negotiates with the investor about a mitigation agreement.

Special rules apply in the defence and cryptology-related sectors. Foreign investors (including EU-investors) must report to the BMWK any acquisitions of 10% or more of the shares of voting rights with regard to enterprises that produce or develop any of the following:

– Goods subject to Part I, section A of the German Export Control List (Annex AL, *Ausfuhrliste*; companies are also covered in case they are in possession of the aforementioned goods)
– Goods for defence purposes covered by a patent or a utility model as classified in accordance with the Patent Act (*Patentgesetz*, PatG) or the Utility Model Act (*Gebrauchsmustergesetz*, GebrMG)
– Certain IT-security products
– Certain critical defence facilities

The BMWK can review and prohibit or restrict these types of transactions. The validity of the purchase contract depends on the approval of the BMWK, which can prohibit the acquisition to protect vital national security interests.

Under the antitrust laws of Germany and the EU, the acquisition of shares in a German enterprise may require clearance from the Federal Cartel Office (*Bundeskartellamt*) and/or the European Commission.

5. Are there any restrictions or prohibitions on doing business with certain countries, jurisdictions, entities, organisations or individuals?

The European Union (EU) has enacted a number of sanctions or restrictive measures within the framework of its common foreign and security policy, and subsequently through various regulations both against third countries (for example, Belarus, Iran, North Korea, Russia, Syria and Venezuela) and/or non-state entities and individuals (such as terrorist groups, cyber criminals or human rights violations perpetrators). As with all other EU member states, these EU regulations are directly applicable in Germany. These sanctions or restrictive measures (the two terms are used interchangeably) have frequently been imposed by the EU in recent years, either on an autonomous EU basis or by implementing binding resolutions of the UN Security Council. They can comprise (among other things):

– Arms embargoes
– Specific or general trade restrictions (import and export bans)
– Financial restrictions, including restrictions related to the capital markets
– Restrictions on admission (visa or travel bans)
– Restriction on services

The most comprehensive sanctions are currently imposed on North Korea, Russia and the Russia-occupied regions of Ukraine.

An overview of country-specific sanctions and restrictive measures in force is available at https://www.sanctionsmap.eu/#/main.

A consolidated list of persons, groups or entities targeted by EU financial sanctions is available at https://webgate.ec.europa.eu/fsd/fsf (requires creation of an "EU Login").

6. Are there any exchange control or currency regulations or any registration requirements under anti-money laundering laws?

Germany does not restrict the export or import of capital, except for restrictions on transactions based on sanctions, restrictive measures or national legislation (see above question 5).

For statistical purposes only, every corporation residing in Germany must report to the German Federal Bank (Deutsche Bundesbank), subject only to certain exceptions, any payment received from or made to an individual or a corporation resident outside Germany, if the payment exceeds EUR 12,500 (or the corresponding amount in other currencies).

In addition, residents must submit reports on claims against or liabilities to non-resident individuals or corporations amounting to more than EUR 5 million per month. Also, there is a reporting obligation for claims against or liabilities to non-residents arising under derivative financial instruments and exceeding EUR 500 million per quarter. Further reports must be made with regard to the value of assets of non-resident companies in which a certain proportion of shares or voting rights are attributed to the resident (10% or more) or to one or more non-resident companies controlled by the resident (more than 50%).

Moreover, a resident must report the value of its non-resident branch offices and permanent establishments. Likewise, residents must report the value of the assets of resident companies in which a certain proportion of shares or voting rights is held by a non-resident (10% or more) or by one or more resident companies controlled by a non-resident (more than 50%). This reporting obligation also applies to the value of the non-resident's resident branch offices and permanent establishments.

7. What grants or incentives are available to investors?

Investment incentives are provided by the federal German government, the German federal states and the European Union (EU). The incentives include, for example, cash incentives, interest-reduced loans, public guarantees, labour-related incentives and research and development (R&D) incentives. While some programmes specifically target small and medium sized enterprises (SMEs), investment incentives are, in general, available to all investors if the investment is beneficial for the German economy. However, the programmes may require companies to have a registered seat or management in Germany.

The most important German institution for financing investments is the KfW Banking Group (*Kreditanstalt für Wiederaufbau, KfW*, https://www.kfw.de/kfw.de-2.html), the nationally operating development bank of Germany owned by the Federal Republic of Germany and the federal states. It makes available a number of different financing tools such as promotional loan programmes, mezzanine financing and private equity. In addition to the KfW, the German federal states have their own development banks that finance projects within their respective state boundaries.

More information on incentive programmes in Germany is available at Germany Trade and Invest (https://www.gtai.de/en/invest/investment-guide), a German limited liability company fully owned by the Federal Republic of Germany. This is an official and up-to-date site promoted by the Ministry for Economic Affairs and Climate Action (BMWK), providing information about investment opportunities in Germany and general investment conditions.

The Ministry for Economic Affairs and Climate Action (BMWK) website (http://www.bmwk.de/Navigation/EN/Home/home.html) provides information about the German economy in general, as well as about key issues such as energy, foreign trade and technology.

Business vehicles

8. What are the most common forms of business vehicles used in your jurisdiction?

In Germany, two types of corporations are commonly used:

– The stock corporation (*Aktiengesellschaft, AG*), in principle comparable to the English public limited company (plc)
– The limited liability company (*Gesellschaft mit beschränkter Haftung, GmbH*), in principle comparable to the English private limited company (Ltd).

They both have the benefit of limited liability for their shareholders. The GmbH is the legal form most commonly used in Germany. This is mainly because the corporate governance of a GmbH is relatively easy to handle and the capital maintenance rules are less strict compared to an AG.

In addition, several forms of partnerships exist (*Kommanditgesellschaft*, *KG*, or GmbH & Co. KG) and it is possible to set up a trust (Stiftung). However, such business vehicles have a rather complex corporate governance structure and some of them expose their members to unlimited liability.

Foreign companies organised under the laws of EU member states are sometimes seen in Germany. This particularly relates to a Dutch limited liability company (*naamloze vennootschap, NV*) or a Dutch private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid, BV*). Legal and tax frameworks from at least two EU member states apply to such business vehicles, so their governance regime is more complex.

9. What are the main formation, registration and reporting requirements for the most common corporate business vehicle used by foreign companies in your jurisdiction?

Registration and formation

A GmbH can be set up by at least one shareholder by notarising its articles of association before a German notary. It comes into force on its registration with the competent commercial register (*Handelsregister*) that is kept at the competent local court (*Amtsgericht*). The registration process usually takes a couple of weeks to be completed. The commercial register contains information on the company's key details, for example:

– Company name and address,
– Purpose of business,
– Share capital,
– Object of the company, and
– Information about managing directors and other persons having formal authority to represent the company.

Commercial registers are centrally accessible through the common register portal of the German federal states (http://www.handelsregister.de). Information is available free of charge. The articles of association of a GmbH, some resolutions of corporate bodies and shareholder lists are also accessible through the commercial register. In addition, further information can be found at the internet portal (http://www.unternehmensregister.de), e.g., financial statements, insolvency- and capital markets-related information and commercial register entries.

Typically, foreign investors acquire a pre-registered GmbH (so-called shelf company) for an average price of EUR 28,000 which includes the registered share capital (see below) so that they do not have to wait for the registration process with the commercial register.

Reporting requirements

A GmbH is obliged to file its financial statements for publication with the German Federal Gazette (*Bundesanzeiger*). The German Federal Gazette is an online database. Costs for filings are low. Depending on the size of the GmbH (determined based on its total assets, sales revenues and number of employees), reporting requirements vary. A small GmbH does not have to have its accounts audited. An auditor is appointed by the general meeting for one business year.

In addition, the German Anti-Money Laundering Act (*Geldwäschegesetz*, GWG) which is based on an EU-Directive, requires the disclosure of the beneficial owners of business vehicles in the German transparency register (*Transparenzregister*). In general, the transparency register is open to the public, but a legitimate interest is to be explained for inspection (e.g., law firms for know-your-customer procedures).

Share capital

A GmbH must have a minimum registered share capital of EUR 25,000 of which EUR 12,500 need to be paid up-front.

Non-cash consideration

Shares in a GmbH can be issued for consideration in cash or in kind.

Rights attaching to shares

Certain fundamental rights are attached to shares of a GmbH by statutory law, for example the right to dividends and proceeds of liquidation, the right to vote on shareholders' resolutions and certain control and management rights. The articles of association of a GmbH can attach special rights to certain shares or restrict rights attached to other shares within a certain legal frame.

10. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

Two decision-making bodies exist in a GmbH, the managing director(s) (*Geschäftsführer*) as the executive management, and the general meeting (*Gesellschafterversammlung*) as the shareholders' forum. The general meeting decides all essential issues regarding the GmbH by law and certain decisions require a qualified majority of votes representing three quarters of the company's share capital. This is, for example, the case for resolutions amending the articles of association and changing the registered share capital. In such cases, 25% of the share capital constitute a blocking minority.

Further, the shareholders can decide on a catalogue of business measures which require their prior consent. They can also issue binding instructions to the managing directors by way of a shareholders' resolution. The general meeting of the GmbH is in principle also responsible for the appointment, revocation and replacement of its managing directors.

Managing directors must be individuals. The appointment of a legal entity as a managing director is not possible. The managing directors do not need to be German or European citizens as long as they are generally able to enter German territory. There are no legal restraints on the managing directors' term of office.

Directors’ and officers’ liability

The managing directors of a GmbH are bound by duties of care to the company. Formal approval of the actions of the managing directors by shareholders’ resolution generally relieves the managing director from known liability. To protect managing directors against personal liability, a directors and officers (D&O) insurance can be taken out.

Parent company liability

As a general rule, a parent company is not liable for the obligations of a GmbH. However, there is some case law on piercing of the corporate veil of a GmbH, resulting in the liability of the parent company. The requirements governing the liability of the parent company in such cases are rather high. The parent company may also be liable to its subsidiary on the basis of tort law. The most common event triggering liability of the parent company under tort law is the “destruction” of the existence of the GmbH.

Environment

11. What are the main environmental regulations and considerations that a business must take into account when setting up and doing business in your jurisdiction?

Environmental law comprises all norms designed to protect the environment. The protective laws related to installations, environmental media, products and substances (pollution control law, water law, soil protection law, waste law, chemicals law) make up the core environmental laws. The applicable law will depend on the activity carried out by the respective company.

There is still no unified environmental code, despite being in the planning stages for years. Instead, statutory regulations are spread over numerous statutes, including the

– Federal Emission Control Act (*Bundesimmissionsschutzgesetz, BImSchG*)
– Federal Water Act (*Wasserhaushaltsgesetz, WHG*)
– Federal Nature Conservation Act (*Bundesnaturschutzgesetz, BNatschG*)
– Federal Soil Protection Act (*Bundesbodenschutzgesetz, BBodSchG*)
– Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz, UVPG*)
– Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschaftsgesetz, KrWG*)

Federal law is often supplemented by state law. In addition, European environmental law has become very important in recent years. Numerous EU directives and, more recently, directly applicable regulations have far-reaching effects on national environmental legislation. This is particularly evident in the field of climate change law. Notably, the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz, TEHG*) may require companies to purchase CO_2 certificates.

The company and/or its management are potentially liable for environmental damages under the Criminal Code (*Strafgesetzbuch, StGB*). This includes administrative offences (*Ordnungswidrigkeiten*) under the Environmental Liability Act (*Umwelthaftungsgesetz*) and the Environmental Damages Act (*Umweltschadensgesetz*).

Employment

Law, contracts and permits

12. What are the main laws regulating employment relationships?

German labour and employment relations are regulated by statutory legislation (which in part transforms EU regulations into applicable national laws), case law, collective bargaining agreements (*Tarifverträge*), works agreements (*Betriebsvereinbarungen*) and individual employment contracts. There is no single unified labour and employment code. Instead, statutory regulations are spread over numerous statutes, including the

German Civil Code (*Bürgerliches Gesetzbuch, BGB*) regulating among other things the general principles of employment contracts, such as notice periods,

- Act on Protection against Dismissal (*Kündigungsschutzgesetz, KSchG*),
- Federal Vacation Act (*Bundesurlaubsgesetz, BUrlG*),
- Act on Working Hours (*Arbeitszeitgesetz, ArbZG*),
- Act on Continued Remuneration (*Entgeltfortzahlungsgesetz, EFZG*), regulating sick pay,
- Minimum Wage Act (Mindestlohngesetz, MiLoG),
- Act on Temporary Employment (*Arbeitnehmerüberlassungsgesetz, AÜG*), regulating employee leasing,
- Works Constitution Act (*Betriebsverfassungsgesetz, BetrVG*), regulating co-determination of works councils, and the
- Act on Collective Bargaining Agreements (*Tarifvertragsgesetz, TVG*).

Since 2015, the Minimum Wage Act (subject to rare exceptions) has provided for a cross-sectoral minimum wage in Germany (which is currently EUR 12.82 gross per hour). In 2017, the admissibility requirements for temporary work were considerably tightened. Since 1 April 2017, employees can be leased under an agreement for temporary work for up to 18 consecutive months in each individual case only. Certain exceptions exist under collective bargaining agreements and works agreements.

Apart from written codes and statutes, labour and employment law has strongly been influenced by case law, in particular of the Federal Labour Court (*Bundesarbeitsgericht, BAG*), but increasingly also of the European Court of Justice (*Europäischer Gerichtshof, EuGH*).

In principle, these laws also apply to foreign employees working permanently in Germany. Even though it is possible to choose the application of foreign laws, such choice of law cannot deprive employees of the protection given to employees by such provisions of German labour law that cannot be derogated from even by mutual agreement. Most of the regulations in the aforementioned statutes are mandatory and apply regardless of any choice of law.

For several industries (for example, the construction, electrical and personal care industries) these or at least some of these mandatory laws also apply to

- Foreign employees who are employed by a foreign employer but are temporarily working in Germany (see the German Act on Posting of Workers, *Arbeitnehmer-Entsendegesetz, AEntG*) and
- Employees of a German employer who are only appointed in a foreign country for a limited period of time.

13. Is a written contract of employment required?

In principle, German law does not stipulate a written form requirement for the conclusion of an employment contract. However, the Act on Documentation of Employment Terms (*Nachweisgesetz, NachwG*) requires that employees are provided with written evidence of the most important working conditions. With effect from

1 August 2022, extensive changes to this Act have been implemented: Employers must now record key information on working conditions, sign this record with wet ink signature and hand it over to the employee. This must be done within different deadlines; some information needs to be provided at the start of the employment relationship, while other items can be provided within a week or a month following the beginning of the employment relationship. If working conditions change during the term of the employment relationship, the employer must also provide evidence of the change by the date on which it is to take effect.

Non-compliance with this employer obligation can be sanctioned with a fine of up to EUR 2,000 per case. However, it does not render a verbally concluded employment contract invalid.

If both the employer and the employee are bound by collective bargaining agreements, the terms and conditions of such agreements apply as a minimum standard. The parties may agree on more beneficial terms of employment at any time. For employees who are not members of a trade union but whose employer is a member of the employers' association, the employment contracts regularly contain reference clauses to the relevant collective bargaining agreements in order to treat employees equally in the end.

Similar to collective bargaining agreements, works agreements entered into by the employer with the local, company, or group works councils which establish minimum standards also apply to all employees, except for certain managerial employees (*leitende Angestellte*).

14. Do foreign employees require work permits and/or residency permits?

In principle, foreign employees require a residency permit, including a work permit. Based on the Skilled Employee Immigration Act (*Fachkräfteeinwanderungsgesetz*) which entered into force on 1 March 2020, foreign skilled employees only require a residency permit to be permitted to work in Germany, provided that no law provides for a restriction or a prohibition. It takes between four and eight weeks to obtain a residency permit (although for certain skilled employees there is the possibility of an accelerated procedure). A small fee of approximately EUR 100.00 is payable, and lawyers' fees may be incurred for legal advice. In particular, the following employees do not require a work permit:

– citizens of the European Union (EU) or European Economic Area (EEA) (no residency permit required),
– In general, citizens of Switzerland (entitlement to a (declaratory) residency permit in case of employment of more than three months),
– Foreign nationals with an unrestricted residency permit (no further residency permit is required), and
– British nationals who already lived in Germany before 31 December 2020 may continue to work without any temporal limitation without a work permit being required (British nationals moving to Germany after 31 December 2020 are treated as third-country nationals).

Employers are obliged to check whether a foreign employee has a residency permit and must keep a copy of it. Furthermore, an employer must inform the competent Aliens Authority (*Ausländerbehörde*) within four weeks of becoming aware that the employment of a foreign employee has been terminated prematurely.

Citizens of Andorra, Australia, Canada, Israel, Japan, the Republic of Korea, Monaco, New Zealand, San Marino, the United States of America and the United Kingdom of Great Britain and Northern Ireland can obtain a work permit regardless of where the employer is based; no qualification requirements do apply. However, the local Employment Agency (Agentur für Arbeit) carries out a priority check, i.e. it checks whether there are people with preferential rights for the specific job.

For citizens of Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia, authorization for employment of any kind can be granted under certain conditions (so-called Western Balkans regulation). Inter alia, there must be a binding offer of employment or training from an employer in Germany.

The Blue Card is the main residence permit for skilled academic workers and is associated with certain benefits, such as unlimited freedom of establishment after a shorter period of time or the possibility of easier family reunification. The Blue Card can be applied by applicants with a specific qualification who exceed a certain salary threshold in the desired employment relationship. The residence permit is then issued without

the approval of the Federal Employment Agency. Since November 2023, the immigration options have been redesigned and expanded to facilitate the immigration of skilled workers to Germany.

Special regulations apply to the temporary secondment of foreign employees to a domestic branch of their foreign employer via the so-called ICT card.

Termination and redundancy

15. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as changes in control, redundancies and disposals)?

In business units (*Betriebe*) with five or more employees, a works council can be elected. The works council has significant rights to information, supervision, and consultation, as well as co-determination in relation to financial, personnel and social matters. Further, a general (at company level) or group works council (at group level) can be established. In companies with more than 100 employees, an economic committee (*Wirtschaftsaussschuss*) must be established. The economic committee has certain additional information rights in relation to economic matters (for example, in case of a direct change of control, if the company does not have an economic committee, an existing works council would need to be informed instead). In particular, in stock corporations (AG), partnerships limited by shares (KGaA) and limited liability companies (GmbH) with at least 500 employees, employees can also be entitled to elect representatives to the employer's supervisory board.

In cases of mass redundancy and other material changes of business (for example, restructurings, changes of work methods, and relocations), the works council of an employer with more than 20 employees has a co-determination right if a significant part of the workforce is affected. In such cases, the works council has consultation rights, and the employer must try to reach an agreement on a reconciliation of interests (*Interessenausgleich*) before implementing the measures. Also, the works council has a co-determination right with regard to compensation for the adverse economic effects the measures could have on employees, which would be set out in a social plan (*Sozialplan*). Usually, the mere disposal of assets, business units or shares in the employer results only in information rights. However, any related restructuring of the business may be subject to co-determination (see above).

16. How is the termination of individual's employment regulated?

In general, in business units with more than ten employees, a valid notice of termination requires a justification on social grounds once the employment in question has lasted more than six months. This means that one of the following must apply within the meaning of the Act on Protection against Dismissal (*Kündigungsschutzgesetz, KSchG*) in order to justify a dismissal:

– Certain personal reasons (such as permanent inability to work),
– Certain kinds of misconduct, or
– Operational grounds (such as redundancies).

Also, if there is a works council, it must be heard in good time before notice of termination is issued. Any notice of termination must be in written form.

In general, notice periods must be observed for dismissals. The statutory minimum notice period after a probationary period, if any, for an employer is four weeks, effective on the 15th or at the end of a calendar month. It increases along with the length of service of the employee (up to seven months to the end of a calendar month after service of 20 years). Longer notice periods may be agreed in the individual employment contract.

For notices of termination issued by the employee, the notice period is four weeks effective as of the 15th or the end of the month, unless otherwise agreed (which is regularly the case). Only in very limited cases is it possible to dismiss an employee with immediate effect for good cause.

The employee can, within three weeks after receiving a notice of termination, file a claim for invalid dismissal with the competent labour court, for which the only remedy is reinstatement (other than in limited circumstances where the employment may be dissolved). This means that dismissal without legally accepted reasons as stated above is not effective, so that the employment continues if the employee wins his or her case. If, instead, the termination is justified on social grounds and formally correct, the employment ends without any severance payment claim (except for cases of mass redundancy with a social plan). However, in practice the parties regularly conclude a settlement agreement during the court proceedings, whereby the employment is terminated against payment of a negotiated severance payment.

17. Are redundancies and mass termination regulated?

If an employment relationship is terminated owing to redundancy and the employees are protected under the Act on Protection against Dismissal (see question 16), the employees affected must be selected on the basis of the following social criteria:

– Duration of service,
– Age,
– Maintenance obligations to immediate family members, and
– Disability.

In general, employees with weaker claims to protection under these social criteria must be dismissed first. In the case of mass redundancy of a certain dimension (depending on the staff numbers), the works council has certain co-determination and consultation rights and can also demand that a social plan is to be set up, providing for severance payments and other social protection mechanisms. Also, if a certain number of employees are made redundant, the employer must notify the Employment Agency before issuing notices of dismissal, otherwise the dismissals are invalid.

Tax[2]

Taxes on employment

18. In what circumstances is an employee taxed in your jurisdiction?

The concept of tax residence is recognised under German income tax law as follows:

- Employees whose domicile or usual place of abode is in Germany are considered as tax residents and are taxed on their worldwide income.
- All other (non-tax resident) employees are only taxed on their German source income arising from their employment in Germany. However, most German double tax treaties provide that only the employee's home jurisdiction is eligible to tax the employee's German source employment income if all of the following prerequisites are fulfilled cumulatively:
  - The presence or employment in Germany does not exceed 183 days in any 12-month-period (some double tax treaties refer to the calendar year or tax year),
  - The remuneration is borne by an employer who is not resident in Germany, and
  - The remuneration is not borne by a German permanent establishment of the (foreign) employer

19. What income tax and social security and other tax or contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Tax resident employees are subject to income tax on their worldwide income. The income tax rate ranges from 14% to 45% depending on the underlying taxable income (progressive income tax rate). There is a general tax-free amount of EUR 11,604 for individuals and EUR 23,208 for married couples (for 2024).

In addition to the income tax, a solidarity surcharge of 5.5% is generally levied as an ancillary surcharge. No solidarity surcharge is due if the annual income tax does not exceed EUR 18,130 for individuals and EUR 36,260 for married couples (for 2024).

Depending on the individual situation, members of religious organisations are obliged to pay church tax (*Kirchensteuer*) in addition to their personal income tax.

In general, all employees must pay approximately 20% of their gross annual salary into social security contributions for the following schemes:

- Unemployment insurance,
- Pension insurance,
- Health insurance, and
- Long-term nursing care insurance.

[2] These Q&A on Tax are meant to give an overview of tax legislation, tax rates, tax effects and other general tax matters. However, they should not be construed as, or substitute for, specific tax advice with respect to doing business in Germany, since such advice requires an evaluation of all relevant factual circumstances and often an assessment on a case-by-case basis. German tax counsel should be consulted as to all questions that arise with respect to the laws and other legal requirements discussed herein and otherwise potentially relevant for doing business in Germany.

The social security contribution schemes are capped at specific thresholds, depending on the employee's gross annual salary:

– Unemployment insurance and pension insurance: EUR 90,600 in the western federal states, and EUR 89,400 in the eastern federal states
– Health insurance and long-term nursing care insurance: EUR 62,100

Non-tax resident employees

Non-tax residents are only taxed on their German source income. Apart from that, there is, in principle, no difference between tax resident and non-tax resident employees with respect to income taxes and social security contributions (see above, tax resident employees).

Employers

Employers must withhold wage taxes (as advanced withholding payments) for the employee's income tax, solidarity surcharge and church tax (if applicable) as well as for the social security contributions on behalf of their employees.

In addition to the employee's contributions, the employer must pay social security contributions of approximately another 20% of the employee's gross salary (capped at the same thresholds as the employee's contributions) (see above, tax resident employees).

Business vehicles

20. When is a business vehicle subject to tax in your jurisdiction?

The concept of tax residence is recognised under German tax law for the taxation of business vehicles as follows:

Tax-resident business vehicles

A corporation is tax resident if it has a registered seat or place of management in Germany. Special provisions apply to business partnerships which are treated as tax transparent for German tax purposes. As a consequence of being tax resident, the corporation is generally subject to taxation in Germany with its worldwide income (subject to limitations by virtue of double tax treaties).

Non-tax-resident business vehicles

Non-tax-resident corporations are subject to limited tax liability on their German source income (for example, income received from a German permanent establishment). A non-tax-resident business can also become subject to a limited tax liability from German source income in case no German permanent establishment exists, for example, in cases where income is generated through German situated real estate (either through rental income or capital gains).

21. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction?

Income tax

The income tax rate for individuals conducting business (including through a partnership) in Germany varies between 14% and 45% plus a solidarity surcharge of 5.5%.

Corporate income tax

Corporations (*Kapitalgesellschaften*) are subject to corporate income tax at a rate of 15% plus a solidarity surcharge of 5.5%. Quarterly advance payments on corporate income tax are due on 10 March, 10 June, 10 September and 10 December.

Trade tax

In addition to income tax or corporate income tax, a municipal trade tax is levied. Trade tax rates regularly vary between 7% and 17.5% depending on the municipality where the taxpayer's business is located. Quarterly advance payments on trade tax are due on 15 February, 15 May, 15 August and 15 November.

Value added tax (VAT)

VAT is generally levied on services and deliveries rendered by German entrepreneurs (regardless of their legal form). The standard German VAT rate is 19% (a reduced rate of 7% as well as VAT exemptions may apply in specific cases). Preliminary VAT returns are filed on a monthly or quarterly basis by the 10th day of the following month and combined in an annual VAT return.

The annual tax returns for income tax, corporate income tax, trade tax and VAT generally have to be filed until 31 July of the year which follows the respective tax year (from 2024 onwards). A filing extension may apply in cases where the annual tax returns are prepared by a professional tax advisor. Any tax payments (other than prepayments) are generally due within one month after a tax assessment notice has been issued by the competent tax office.

Dividends, interest and IP royalties

22. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

Dividends paid to foreign corporate shareholders are subject to 25% withholding tax, plus a 5.5% solidarity surcharge.

Subject to compliance with the German Anti-Treaty/Directive Shopping Rules, withholding taxes can be further reduced by domestic law, Directive 2003/123/EC amending Directive 90/435/EEC on the taxation of parent companies and subsidiaries (Amended Parent-Subsidiary Directive) or a double tax treaty.

Dividends received

Dividends received by a corporation from a domestic or foreign corporation are generally 95% tax exempt (provided that the dividend receiving corporation maintains a minimum shareholding of at least 10% in the domestic or foreign corporation at the beginning of the respective calendar year).

For trade tax purposes, the 95% tax exemption only applies in case of a shareholding of at least 15% in the domestic or foreign corporation at the beginning of the assessment period (usually the calendar year).

Individuals receiving dividends as a business income benefit from the partial-income exemption, that is, only 60% of the dividends are taxed. Dividends received by individuals as non-business income are, in principle, subject to a 25% withholding tax plus 5.5% solidarity surcharge and church tax (if applicable).

Interest paid

Generally, there is no withholding tax on interest payments on "plain vanilla" loans to non-residents. However, there are some exceptions: For instance if the underlying debt is collateralized with German situated real property, or if profit-related debt instruments (e.g., profit participation rights) are involved.

IP royalties paid

Subject to reductions under an applicable double tax treaty or Directive 2003/49/EC on interest and royalty payments (Interest and Royalty Directive), IP royalties paid to non-resident corporate shareholders are subject to withholding tax at a rate of 15% plus solidarity surcharge of 5.5% thereon.

Groups, affiliates and related parties

23. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Yes. Under the interest barrier rules, the deduction of annual net interest expenses (excess of interest expenses over interest income) is generally limited to 30% of the relevant taxable earnings before interest, taxes, depreciation and amortisation (EBITDA). However, the limitation on net interest deduction does not apply if any of the following exemptions apply:

– Where net interest expenses are less than EUR 3 million (de-minimis exemption),
– Where the company is a stand-alone operation, i.e. is not a related party and does not have a permanent establishment outside its state of tax residency), or
– Where the company belongs to a group and the equity ratio of the company is not lower than 2% compared to the overall equity ratio for the whole group (equity-ratio exemption).

Corporations must fulfil further conditions (no detrimental shareholder financing to apply the equity-ratio exemption).

Currently, there is a pending legal proceeding before the German Federal Constitutional Court (*Bundesverfassungsgericht, BVerfG*) in relation to the potential unconstitutionality of the interest barrier rule.

Apart from the interest barrier rules, the deductibility of interest expense on loans from foreign affiliates is limited by the general transfer pricing requirement that debt financing relationships between related parties must comply with arm's length terms and conditions.

24. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Controlled foreign company rules may apply to a German tax resident with respect to (passive) income generated by a controlled foreign (intermediate) company if the following preconditions are fulfilled:

– A German tax resident controls a foreign company, that is, if more than half of the voting rights or more than half of the shares in the nominal capital of the foreign company are directly or indirectly attributable to the German tax resident, alone or together with related parties,
– The income of the foreign company is regarded as passive income, and
– The passive income of that controlled foreign company is subject to a low-tax regime, that is, effectively taxed at a rate of less than 15% (from 2024 onwards).

The controlled foreign company rules do generally not apply if the taxpayer can prove that the controlled foreign company is resident in an European Union (EU) or European Economic Area (EEA) member state and meets certain substance requirements.

The controlled foreign company rules may also apply to the entire (active and passive) income of a controlled foreign (intermediate) company which is resident in a non-cooperative tax jurisdiction.

25. Are there any transfer pricing rules?

Yes. Following the principles of the OECD guidelines and recommendations, transfer prices must be determined on an arm's-length basis from a German tax perspective. In general, the standard transfer

pricing methods accepted under German tax law are the comparable uncontrolled price method, the resale price method, the cost-plus method and the transactional net margin method. Specific (master file and local file) documentation requirements must be fulfilled for cross-border transactions between affiliated companies (in particular as regards to the applied transfer prices, as well as a function-and-risk analysis), subject to certain business volume thresholds. Penalties may be levied in case of a failure to comply with the documentation requirements, e.g., in case of failure to timely compile the required documentation or in case of an incomplete or insufficient documentation.

Custom duties

26. How are imports and exports taxed?

Goods which are in free circulation within the EU are not subject to customs duties. Imports from outside the EU are subject to customs duties almost exclusively on an ad valorem basis.

Double tax treaties

27. Is there a wide network of double tax treaties?

Yes. Germany has a wide network of double tax treaties with about 100 countries including the United States of America and all European countries.

Competition

28. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

As in many jurisdictions, competition law in Germany can be divided into four main branches governed by specific legal regimes according to the Act against Restraints of Competition (ARC) (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*):

– The prohibition of anti-competitive agreements (cartels)
– The prohibition of abuse of a dominant position
– Merger control
– Private enforcement

Therefore, under certain conditions the ARC outlaws concerted practices as well as unilateral conduct. As there is no exemption for foreign companies doing business in Germany, the ARC is applicable to all foreign entities. The Federal Cartel Office (*FCO, Bundeskartellamt*) is the competent German competition authority for enforcing the ARC at federal level.

With the 11th amendment to the ARC that came into force end of 2023, the Federal Cartel Office also has the power to impose remedies (following a sector inquiry), including (as a last resort) divestitures, to address "significant and continuous disruptions of competition", even if the addressee does not breach competition law. This "new competition tool" can be considered as a 5th branch under German competition law which seeks to fill a perceived enforcement gap in situations where harm to competition is not attributable to anticompetitive conduct but to imperfect market structures (in particular, narrow oligopolies).

Competition authority

The Federal Cartel Office prosecutes anti-competitive market behaviour (there are also regional antitrust authorities for purely regional cases). The Federal Cartel Office can impose significant fines for breaches of the cartel prohibition. From a procedural and enforcement perspective, the still growing importance of private (in contrast to administrative) enforcement of German competition law is noteworthy, in particular, in the context of cartel damage claims.

The ARC contains specific provisions which aim to facilitate such claims, for example, even decisions of the European Commission and those of competition authorities of other EU member states have binding effect on cartel damage claims in Germany.

The 11th amendment to the ARC introduced a number of changes with regard to the Federal Cartel Office's enforcement powers and to private enforcement. Besides the "new competition tool", it introduced new provisions promoting the effective enforcement of the Digital Markets Acts (Regulation (EU) 2022/1925) and facilitating the disgorgement of benefits that undertakings potentially gain from breaching competition law.

Initial information on competition law rules and the Federal Cartel Office's practices is available at www.bundeskartellamt.de.

Restrictive agreements and practices

Section 1 of the ARC contains a prohibition of cartel agreements (cartel ban). As the cartel ban was fully harmonised with Article 101 of the Treaty on the Functioning of the European Union in 2005, agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition, are prohibited.

The cartel ban does not differentiate between horizontal and vertical agreements. According to section 2 of the ARC, the European block exemption regulations also apply.

In case of breaches of the cartel ban, the ARC provides for fines of up to 10% of the entire group turnover of the undertakings concerned.

While restrictive agreements and practices are generally considered to be administrative offences, such conduct may also constitute a criminal offence according to new case law, in particular, in the context of horizontal and vertical price agreements in public tenders (bid rigging) regularly violate sections 263 and 298 of the German Criminal Code (*Strafgesetzbuch, StGB*).

Unilateral conduct

German competition law aims to outlaw unilateral anti-competitive market behaviour in the form of abuse of a dominant market position. According to the ARC there is a (rebuttable) presumption of market dominance if an undertaking has a market share of at least 40%. Further, the ARC also provides for a dominance test for oligopolies. Certain forms of discriminatory behaviour are prohibited for dominant enterprises. The ARC sets out a non-exhaustive list of prohibited behaviour, including:

– Directly or indirectly impairing other undertakings in an unfair manner, or treating equal undertakings unequally without any objective justification,
– Requesting payment or other business terms which differ from those which would very likely arise if effective competition existed,
– Requesting less favourable payment or other business terms than the dominant undertaking itself demands from similar buyers in comparable markets, unless there is an objective justification for such differentiation,
– Refusing access to essential facilities in return for reasonable fees, and
– Asking for unjustified advantages without objective justification.

There are also provisions which outlaw the abuse of “relative market power” in relation to dependent firms.

Already with the 10th amendment to the ARC, the Federal Cartel Office’s powers of intervention were extended by introducing a new Section 19a of the ARC. Under this provision, the Federal Cartel Office can prohibit companies that are of “paramount cross-market significance for competition” from engaging in certain anti-competitive practices.

Section 19a ARC provides for a two-step procedure: First, the Federal Cartel Office must verify whether the company qualifies as a company with “paramount significance for competition across markets” and, if it does, the Federal Cartel Office will issue a respective order. In the second step, the Federal Cartel Office can then issue a specific prohibition order. The company, however, can prove that the conduct is justified.

So far, the Federal Cartel Office has declared such paramount cross-market significance for all four GAFA companies (Google/Alphabet, Apple, Facebook (now Meta) and Amazon) and, following these declarations, proceedings regarding possible abusive conduct have been opened.

29. Are mergers and acquisitions subject to merger control?

The Act against Restraints of Competition (ARC) (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) regulates merger control, including jurisdictional and procedural aspects. However, the European Commission has jurisdiction if the proposed transaction has a “Community” dimension, as set out in the Merger Regulation (Regulation (EC) 139/2004 on the control of concentrations between undertakings).

The ARC prescribes a mandatory filing of transactions before their implementation depending, among other things, on the parties’ turnover and whether the merger has domestic effect in Germany. In particular, to fall within the scope of German merger control, a concentration must meet all of the following thresholds in the financial year preceding the concentration:

– The combined worldwide turnover of all undertakings concerned exceeds EUR 500m.
– One participating undertaking had turnover exceeding EUR 50m in Germany.
– At least one other undertaking had turnover exceeding EUR 17.5m in Germany.

In addition to the above thresholds, an alternative size-of-transaction threshold applies. This threshold was introduced in 2017 to cope with the phenomenon of the digital economy and business models which lead to transactions with a potential effect on competition but where the turnover of the target is (still) very low, so that it would escape merger control. Since then, a concentration is also subject to German merger control if (only) the first two of the three thresholds above are met and both the

– Consideration for the acquisition exceeds EUR 400m, and
– Target company has substantial operations in Germany.

A concentration within the meaning of the ARC exists in the following four cases:

– Acquisition of all or of a substantial part of the assets
– Acquisition of direct or indirect control
– Acquisition of shares or voting rights when they reach for the first time 25% or 50%
– Acquisition of material competitive influence

Under German law, an acquisition of control is generally interpreted in the same way as under the Merger Regulation. As there is no exemption, the ARC is applicable to foreign entities doing business in Germany, including foreign-to-foreign transactions if they have a domestic effect in Germany (section 185, ARC).

Ther ARC contains two major differences to the Merger Regulation:

– The acquisition of shares or voting rights of only 25% is always notifiable
– Even acquisitions below 25% can be notifiable if “competitively significant influence” is acquired (which is less than control and a de facto equivalent to a 25% shareholding)

The 11th amendment to the ARC intended to strengthen merger control for markets where a sector inquiry reveals competition issues. Therefore, following a sector inquiry, the Federal Cartel Office can order undertakings to notify all mergers and acquisitions in one or more sectors of the economy if the sector inquiry indicates that future concentrations could significantly impede effective competition in Germany. The obligation to notify will apply to transactions where the acquirer has a German turnover of more than EUR 50m and the target has a German turnover of more than EUR 1m. It will apply for a period of three years (commencing upon service of the order), renewable at three-year intervals up to three times.

Foreign-to-foreign acquisitions are subject to the merger control laws if the thresholds set out above are met. In this case, it is not hard to argue that the transaction has no domestic effect, at least if the target company is active in Germany to a certain extent or the participating undertakings are competitors in the German domestic market. At the end of 2014, the Federal Cartel Office published a guidance note on the domestic effect test. The paper outlines the circumstances where the Federal Cartel Office deems a transaction not to have a domestic effect (which should be assessed on a case-by-case basis).

Being harmonised with EU competition law, the substantial test during merger control proceedings is whether the transaction will significantly impede effective competition, in particular, if it creates or strengthens a dominant market position. However, under the ARC, such a concentration cannot be prohibited by the Federal Cartel Office, if it will also lead to improvements of the conditions of competition that outweigh the impediment to competition (consideration clause) or if requirements for a prohibition are fulfilled exclusively on markets on which goods or commercial services have been offered for at least five years and which had a total domestic sales volume of less than EUR 20m in the last calendar year (minor-market clause). This minor-markets clause does not apply in the context of the value-based threshold.

After a concentration has been notified, the Federal Cartel Office decides within one month whether it will initiate the main examination proceedings (known as Phase II proceedings) or whether it considers the merger to be a concentration on which it does not have to object. In the case of Phase II proceedings, the examination period runs five months.

Infringing the prohibition on the implementation of transactions before clearance by the Federal Cartel Office (so-called gun-jumping prohibition) is subject to fines of up to 10% of the total worldwide group turnover and can lead to nullity of the transaction (civil law related risk). Various cases in the past have shown that the Federal Cartel Office vigorously enforces the gun-jumping prohibition.

Anti-bribery and corruption

30. Are there any anti-bribery or corruption regulations affecting business in your jurisdiction?

The major provisions on combatting bribery and corruption are laid down in the German Criminal Code (*Strafgesetzbuch, StGB*). Anti-bribery rules under German law differentiate between the functions of the recipient: public officials, employees or agents of private business, healthcare professionals, members of legislative assemblies or members of workers councils. In general, German law applies also to foreign bribery. In most cases both, active bribery (offering, promising or granting) and passive bribery (demanding, allowing to be promised or accepting), are similarly punishable.

Unlike other countries, Germany does not have a centralised anti-corruption agency. Investigations are conducted by state prosecutors and police forces, with respect to tax fraud by the tax investigation service. However, state prosecutors and police have created specialised units or centralised investigations. State prosecutors and tax investigators are obliged to share information on suspicion of bribery.

Under current German legislation, only individuals can be held criminally liable.

However, under the current legal situation, corporations can be subject to regulatory investigations and sanctions. Those fines that may be imposed on corporations can be quite severe. The statutory maximum of these fines is EUR 10m. Any proceeds obtained by the company through bribery will be taken into account when calculating the regulatory fine. If the profit generated by the offence is higher, the fine may exceed this maximum up to the actual earnings that benefitted the entity. Such corporate fines may also be imposed on legal entities if the senior management member failed to meet their supervisory obligations which were necessary to prevent bribery committed by employees or agents. According to recent federal jurisdiction, compliance measures may mitigate the fine.

German criminal law allows the forfeiture (disgorgement) of the proceeds the company obtained from the corruptive conduct. Expenses cannot be deducted, including the bribe itself. However, a regulatory fine cannot be imposed in addition to forfeiture. In addition, corporations are to be excluded from public tenders for a term of five years if they have been fined for bribery or if a member of the executive board has been convicted for bribery. However, it can be a defence for a company to demonstrate that it has gone through a successful “self-cleaning” process, meaning that its compliance efforts were strengthened, damages were compensated for and the company co-operated with the law enforcement agencies.

Bribery of public officials. German criminal law prohibits the offering, promising or granting of anything of material or immaterial value to public officials, if such official is requested to or rewarded for performing or omitting to perform any activity falling within their function or duties. This is irrespective of whether such duties are violated or not. The regular punishment is imprisonment for up to three years and/or a fine. Public officials are German civil servants, judges or soldiers, employees of governmental institutions or persons entrusted with public functions irrespective of the organisational form of the entity. Therefore, employees of state-owned or state-controlled companies may also qualify as public officials if they exert public powers. This may apply to companies in the utilities or transportation sector or to hospitals. Facilitation payments will also be regarded as illegal. This does also apply to bribery of public officials of the EU or their organisations.

If public officials are expected to violate their public duties or to exert discretionary powers, the punishment is imprisonment for up to five years and/or a fine. In this case, bribery of public officials of a foreign state is also a criminal offence.

Bribery of members or parliament. There is also a comparable criminal provision for bribing law makers and members of legislative assemblies on a federal, state, regional or local level. This will include the purchase of a vote in an election or ballot in parliament or offering, promising or granting of a benefit for any

activity in connection with the mandate in parliament or in a legislative assembly. Political donations are explicitly exempt, as are contributions admitted by applicable parliamentary rules. Usual lobbying activities, including reasonable hospitality are always admissible.

Bribery in business. Offering, promising or granting a benefit to an employee or an agent of a business (but not to consumers or business owners) in consideration for undue preferential treatment in the purchase of goods or services constitutes bribery in business. In particular, sales related commissions paid to employees of customers are generally prohibited. However, contributions with the mere purpose of maintaining good business relations are admitted. Since anti-bribery provisions protect the interest of competitors, consent of the employer or principal to any benefit does not exclude criminal risks.

Healthcare sector. German criminal law also provides for specific offences of bribing of healthcare professionals. This means that offering, promising or granting a benefit to a healthcare professional for the prescription of drugs or medical devices, their purchase for immediate application or referrals for treatment or examination are not allowed. This strict rule can affect co-operations between pharmaceutical companies and healthcare providers or bundling models in the distribution of pharmaceuticals or medical devices.

Other bribery related offences. Making illegal payments or creating slush funds can also be prosecuted as embezzlement and is deemed a predicate offense of money laundering. Treating such payments as tax deductible is deemed tax evasion. Refraining from necessary organizational precautions or appropriate controls can constitute aiding and abetting of bribery or a regulatory offense of violation of obligatory supervision and also trigger corporate fines.

Rules for hospitality. Moderate hospitality is generally accepted. This applies to both public officials as well as employees or agents of a business. Particular care is required when public officials are concerned. Anti-corruption guidelines of public authorities, usually available relating to the internet, contain restrictive rules on the acceptance of gifts, hospitality or invitations to events. Although these anti-corruption guidelines only have effect in relation to governmental authorities and public officials, a violation of these rules may be seen as a red flag indicator for illegal purposes. In the private sector hospitality is treated more generously. Usual invitations for business lunches are admitted, and even other kinds of hospitality when related to business purposes. Hospitality of a purely private nature, e.g., to cultural and sports or leisure activities are not generally prohibited but associated with certain risks, in particular, if the monetary value is high.

Intellectual property

31. Outline the main IP rights that are recognised in your jurisdiction.

Patents

Definition and legal requirements. To merit protection under the Patent Act (*Patentgesetz, PatG*) or the European Patent Convention (EPC), an invention must:

– Be novel,
– Involve inventive step, and
– Be susceptible of industrial application.

The right holder is entitled to use, license or prevent others from using the patent.

Registration and substantive examination. An application must be submitted to the German Patent and Trade Mark Office (*Deutsches Patent- und Markenamt, DPMA*) or the European Patent Office (EPO). It is strongly recommended to instruct a patent attorney to draft the patent application in order to obtain proper protection.

Further detailed information on the procedure can be obtained at the DPMA (www.dpma.de) or the EPO (www.epo.org).

Enforcement and remedies. The patent right can be enforced by the right holder or an exclusive licensee.

German national patents can be enforced before specialized chambers of the District Courts (*Landgerichte*), most importantly the District Courts of Munich, Mannheim, Dusseldorf and Hamburg.

European Patents can be either enforced before the national Districts Courts mentioned before, or before the newly established Unified Patent Court (UPC).

The UPC has jurisdiction over 17 Member States of the European Union (EU) (Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, and Sweden. In contrast, Cyprus, the Czech Republic, Greece, Hungary, Ireland, Romania, and Slovakia). The UPC includes:

– One central division
– Local divisions in several participating EU member states
– Regional divisions (but so far only one)
– One Court of Appeal

Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Patents enjoy a presumption of validity in enforcement proceedings (no invalidity defence available). The validity must be challenged in separate nullity proceedings before the German Federal Patent Court (*Bundespatentgericht, BPatG*).

Term of protection. Patent protection is granted for 20 years from the date of filing, provided that an annual patent renewal fee is paid. The term of protection is not renewable (except for cases where there is a supplementary protection certificate).

Utility models

Definition and legal requirements. In addition to a patent, an invention can be protected as a utility model under the Utility Model Act (*Gebrauchsmustergesetz, GebrMG*). The requirements for protection are basically the same as for patents. The annual fees are lower than those for patents.

Registration and formal examination. Protection can be obtained by mere registration and examination by the DPMA (no substantive examination).

Enforcement and remedies. Enforcement and remedies of a utility model are similar to those for a patent (see above, patents). However, utility models do not enjoy a presumption of validity in enforcement proceedings, that is, the defendant may raise an invalidity defence.

Term of protection. Utility model protection is granted for ten years from the date of filing, provided that a renewal fee is paid (after three, six and eight years).

Trade marks

Definition and legal requirements. The German Trade Mark Act (*Markengesetz, MarkenG*) protects words, pictures, letters, numbers, acoustic signs, three-dimensional designs, colours and combinations of colours. To be registered as a trade mark, a mark must:

– Be sufficiently distinctive
– Not exclusively describe a product
– Not mislead the consumer
– Not be a public sign

The right holder is entitled to use, license or prevent others from using the trade mark.

Registration and (limited) substantive examination. An application, together with the prescribed fee, must be submitted to the DPMA.

Enforcement and remedies. Trade marks can be enforced by the right holder or an exclusive licensee. Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Term of protection and renewability. A trade mark is protected for ten years from the date of the application, with unlimited extensions of ten years.

European Union trade marks. In addition to national trade marks, European Union trade marks (EUTM) can also be enforced in Germany. An EUTM is a trade mark that is valid across the EU, registered with the European Union Intellectual Property Office (EUIPO) (https://euipo.europa.eu/ohimportal/en) in accordance with the provisions of the EUTM Regulations. The term of protection and renewability are similar to those for German trade marks.

Registered designs

Definition. Two-dimensional patterns and three-dimensional designs are aesthetic creations and can be protected under the Design Act (*Designgesetz, DesignG*) provided the right holder is entitled to use, license or prevent others from using the registered design.

Registration and formal examination. A design must be registered at the DPMA.

Enforcement and remedies. Design rights can be enforced by the right holder or an exclusive licensee. Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Term of protection and renewability. Protection can be extended for up to a maximum of 25 years as of the date of application.

Registered community designs (RCDs)

Definition and legal requirements. RCD is the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation. RCD is valid across the EU. RCDs are protected, provided:

– The design is new
– The design has individual character

Registration and formal examination. RCD must be registered with the EUIPO.

Enforcement and remedies. RCDs are protected against similar designs even when the infringing design has been developed in good faith, that is, without knowledge of the existence of the earlier design.

RCD can be enforced by the right holder or an exclusive licensee. Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Term of protection and renewability. RCD is initially valid for five years from the date of filing and can be renewed for consecutive terms of five years up to a maximum of 25 years.

Unregistered community designs (UCDs)

Definition and legal requirements. Under the Community Design Regulation of 2002, registered and unregistered designs are protected, provided:

– They have individual character
– The design is new
– The design has been made publicly available

Enforcement and remedies. UCDs grant the right to prevent commercial use of a design only if that design is an intentional copy of the protected one, made in bad faith, that is, with knowledge of the existence of the earlier design.

UCDs can be enforced by the right holder or an exclusive licensee. Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Term of protection. Protection is granted for three years as of the date on which the design is first made publicly available. This period is not renewable.

Copyright

Definition and legal requirements. The German Copyright Act (*Urheberrechtsgesetz, UrhG*) protects a creative work as an immaterial asset, independent of its embodiment. The work must be a personal, intellectual creation by the author and can be, e.g., literary, scientific or artistic. The right holder is entitled to use, license or prevent others from using the copyrighted work.

Protection. Copyright protection subsists automatically, without any registration requirements.

Enforcement and remedies. Copyrights can be enforced by the right holder or an exclusive licensee. Depending on the circumstances, the remedies available are:

– Injunctive relief (permanent or preliminary)
– Rendering of accounts
– Damages
– Destruction of infringing items
– Recall of products

Term of protection and renewability. Copyright lasts for 70 years after the death of the creator.

Confidential information

Definition, legal requirements and protection. Industrial espionage and breach of confidentiality obligations by an employee can be punished by measures of civil and criminal law under the Trade Secret Protection Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*) implementing Directive 2016/943/EU (Trade Secrets Directive) into German law.

There is no protection for confidential information as such, even if the document concerned is labelled confidential. Confidentiality must be ensured by appropriate confidentiality measures (that is, non-disclosure agreements, regulated access, including technical measures).

Term of protection. Protection of confidential information ends in any of the following circumstances:

– Termination of the agreed contractual provision
– When protected information is disclosed by another source
– When the need of, or interest in, maintaining confidentiality no longer exists for other reasons

Distribution Agreements

32. Are marketing agreements regulated?

General

Germany has implemented Council Directive 93/13/EEC on unfair consumer contracts in such a manner that general terms and conditions (GTC, *Allgemeine Geschäftsbedingungen*) in a B2B (Business-to-Business) context are also subject to review by the courts regarding the terms being fair, transparent and not surprising.

Distribution agreements are often regarded as standard terms and conditions provided by the principal. Consequently, when such contracts fall under German law, they become subject to extensive case law. Therefore, there are restrictions on contractual freedom which can be surprising when viewed from the perspective of other legal systems.

Distribution agreements are also subject to the Act against Restraints on Competition (ARC) (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*), which has been largely harmonised with EU competition law, and which for example, restricts arrangements regarding fixed sale prices or arrangements restraining the sale to customer groups or into territories.

In addition to EU Competition law the German Act against Restraints on Competition also addresses such companies that do not have absolute market power but relative market power vis a vis their contracting partners (concept of relative market power). This type of market power often exists e.g., with regard to authorized dealer agreements in the automotive industry.

Agency

Agency arrangements are governed by the Commercial Code (*Handelsgesetzbuch, HGB*), which implements Directive 86/653/EEC on self-employed commercial agents. The Commercial Code contains a number of mandatory provisions to protect commercial agents.

These mandatory provisions cover minimum notice periods for indefinite-term agency contracts. The minimum notice periods may vary from one to a maximum of six months depending on the duration of the agency contract.

Also, the commercial agent is entitled to a commission as soon and in so far as the customer of the commercial agent’s principal has completed the transaction.

Mandatory provisions also exist on the validity of post-termination restrictions and an indemnity claim for loss of customer base following termination of the agency agreement. The latter is limited to the average of the annual commission payments received by the commercial agent during the last five years of the agreement. If the commercial agent is acting in the European Economic Area (EEA), the indemnity claim cannot be excluded, not even through choice of law or jurisdiction or a combination of both.

Even if the agency agreement is subject to a law outside the EEA, if the agent is physically located within the EEA, they may still have the right to claim compensation under specific conditions. Additionally, German courts could potentially grant the agent a place of jurisdiction in such cases.

Distribution/dealer agreements

Under German law, there are no specific statutory provisions that regulate distribution agreements.

However, if the distributor is integrated into the supplier's sales organization (for example, the agreement includes extensive control rights, audits, and requirements for specific training, etc.), some provisions in the Commercial Code for commercial agents may apply analogously. Specifically, the distributor may be entitled to compensation for the loss of a customer base following the termination of the agreement if certain conditions are met. This could occur if the distributor is contractually obligated (even indirectly) to provide customer data to the supplier to such an extent that the supplier can immediately and automatically utilize the benefits of the customer data upon termination of the distribution agreement.

Additionally, there is extensive case law based on general terms and conditions as well as duties based on consideration and loyalty that should be considered.

Franchising

There is no specific legislation governing franchising in Germany. However, depending on the design of the franchise, some provisions of the Commercial Code for commercial agents (for example, termination and indemnity claims) may also apply analogously to franchise agreements. A large number of court rulings provide information on contractual practices. Before a franchise agreement is concluded, the franchisor is especially obliged to give the potential franchisee accurate information, including experiences gained from its existing franchise system, enabling the franchisee to analyse the risks and potential rewards of entering into the franchise. Failure to provide correct information may result in a claim for damages by the franchisee.

The existing court rulings also show that the requirements for valid termination of a franchise for good cause are extremely onerous, especially if the franchise agreement involved considerable investments. Like distribution agreements, franchise agreements are governed by the Act against Restraints of Competition and EU competition law, with the exceptions resulting from the Pronuptia ruling of the European Court of Justice (*Europäischer Gerichtshof, EuGH*).

E-Commerce

33. Are there any laws regulating e-commerce?

The most relevant law for e-commerce is the German Civil Code (*Bürgerliches Gesetzbuch, BGB*).

The German Civil Code contains provisions on “distance contracts”, e.g., contracts which are concluded online, by e-mail or via an app. Especially with regard to the B2C (Business-to-Consumer) space, these provisions give specific requirements when addressing consumers, such as:

– The offer must display certain information transparently, e.g., information regarding the goods sold, the terms of a subscription, the price, shipping costs and restrictions.
– In case of purchase contracts and several other contract types, consumers have a right of withdrawal. For online sales of goods, this means that a consumer is generally entitled to return goods without cause within 14 days after receiving them (though certain exceptions apply, for example, for custom-made goods). However, the way the customers must be informed of their right of withdrawal is very specific. Failure to adhere to the exact requirements can lead to the right of withdrawal extending to a period of one year and 14 days.
– When buying items online, the button which leads to the conclusion of the contract must be clearly labelled as such, ideally containing the information that costs will be incurred by the customer.
– Similarly, businesses that give the option to conclude contracts online must also give the option to cancel them online. In order to fulfil this requirement the business must provide a “cancellation button”.

The Telemedia Act (*Telemediengesetz, TMG*) governs many aspects of information services. In particular, business websites must give a legal notice containing information about the provider. E-mails with commercial content must be clearly recognisable. Further, the Telemedia Act sets out ways to limit the provider liability for user-generated content.

There are three forms of electronic signatures under EU-law, each replacing a different conventional signature. The specifics are laid down in the eIDAS Regulation (Regulation (EU) 910/2014) and the German Trust Services Act (*Vertrauensdienstegesetz, VDG*). Additionally, the German Civil Code gives further requirements for electronic signatures to legally replace conventional signatures.

Note:

Private enforcement of violations against e-commerce law and consumer law is very common in German. Consumer protection associations play a crucial role in closely monitoring and pursuing any infringements They have the authority to take legal action against companies, including filing lawsuits or requesting cease and desist orders.

Furthermore, recent developments in EU consumer law have introduced stricter measures. Widespread violations of EU consumer law can now result in significant administrative fines, potentially reaching up to 4% of the annual group turnover.

34. Are online platforms regulated in relation to their use for marketing/sales purposes?

The Online Platforms Regulation ((EU) 2019/1150) directly applies in Germany and governs online intermediation services, including online marketplaces and online search engines. Additionally, the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) outlines requirements for providers of online marketplaces regarding customer information.

Furthermore, the Digital Services Act (Regulation (EU) 2022/2065) establishes extensive requirements for online markets and services.

Platform providers, for instance, must specify the main parameters for rankings and explain the relative importance of these parameters compared to others. They must also disclose any differentiated treatment, such as for products offered by the online marketplace provider. Additionally, online marketplaces are required to have an internal system for handling business user complaints and offer mediation services.

In addition to these regulations, data protection rules must be carefully considered, especially concerning marketing and sales activities that involve personal data. Moreover, the Digital Markets Act (Regulation (EU) 2022/1925) specifically applies to larger platforms.

Advertising

35. How is advertising regulated in your jurisdiction?

There is no single unified regulation on advertising in Germany. Instead, regulations are spread over numerous statutes.

Regulations governing advertising activities are especially set out in the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb, UWG*) that prohibits unfair business practices which are likely to have a noticeable adverse effect on the interests of competitors, consumers or other market participants.

The UWG prohibits various forms of unfair advertising, including:

– Discrediting advertising
– Aggressive advertising
– Misleading advertising
– Unfair forms of comparative advertising
– Unsolicited advertising

In more detail:

– Section 3 (3) refers to a blacklist of 32 business practices which are considered unfair and detrimental on their own.
– Section 3 (a) prohibits the breach of any laws which regulate market behaviour, including regulatory provisions on product safety.
– Section 4 prohibits (among other things) the discrediting of goods and services provided by competitors as well as the imitation of competitors' products.
– Section 4 (a) prohibits aggressive commercial practices against consumers.
– Section 5 and 5 (a) prohibit misleading advertising.
– Section 6 provides for certain restrictions on comparative advertising.
– Section 7 provides for restrictions on unsolicited advertising, including direct marketing via e-mail or SMS.
– Restrictions on unsolicited advertising.

Advertising is also regulated in sector-specific statutes. The most important regulations governing advertising activities are the:

– Healthcare Sector Advertising Act (*Gesetz über die Werbung auf dem Gebiet des Heilwesens, HWG*) and the Advertising Guidelines enacted by the respective State Pharmacy Chamber,
– Food and Feed Code (*Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch, LFBG*) which prohibits disease-related advertising claims,
– Price Indication Act (*Preisangabenverordnung, PAngV*) which sets out transparency requirements regarding price indications,
– Regulation (EC) 1924/2006 on nutrition and health claims made on foods (Nutrition and Health Claims Regulation),
– Broadcasting and Telemedia Treaty (*Rundfunkstaatsvertrag, RStV*) entered into between the federal states, which sets out regulations on advertisements for public and commercial broadcasting (among other things),
– Advertising Guidelines of the State Media Authorities, which further clarify the provisions of the Broadcasting and Telemedia Treaty governing sponsorship and advertising opportunities for commercial broadcasters,

– State Treaty on Gambling (*Glücksspielstaatsvertrag, GlüStV*) which sets out regulations on advertisements for public gambling, and
– Youth Protection in the Media Treaty (*Jugendmedienschutzstaatsvertrag, JMStV*).

Advertising is also indirectly regulated by data protection regulations, if personal data is used for advertising purposes.

36. How are sales promotions regulated in your jurisdiction?

Except for specifically regulated product/service sectors, for example, health-related products, sales promotions can be freely designed provided they are not misleading or aggressive. Price draws and competitions are generally permissible provided the respective terms and conditions for participation are clear and transparent. Outside of the health sector it is also permissible to provide free gifts in sales promotions.

Data protection

37. Are there specific data protection laws? If not, are there laws providing equivalent protection?

Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR) largely harmonises data protection law at EU level. The GDPR became directly applicable on 25 May 2018 and does not require transposition into member state law (unlike the prior EU data protection directive).

Although directly applicable in all EU member states, the GDPR does not provide for full harmonisation. It leaves room for national laws to some extent in some areas (for example, for data protection relating to employees or the processing of health data). Therefore, businesses will have to assess on a case-by-case basis whether the GDPR and/or specific national laws (on federal or state level) need to be met when doing business in Germany. While at least the major German data protection laws have already been adapted to the GDPR, there still remains some legal uncertainty regarding the application of national data protection law in the light of the GDPR (among others, this applies to the data protection related provisions in the various state-level hospital laws (see below). The main statutes are as follows:

– GDPR
– Federal Data Protection Act (*Bundesdatenschutzgesetz, BDSG*) and several other federal Acts, including the Social Security Code (*Sozialgesetzbuch, SGB*, stipulating, among others, a limitation of outsourcing to non-EU IT providers for social security authorities) or, as of 1 December 2021, the Telecommunication Telemedia Data Protection Act (*Telekommunikation-Telemedien-Datenschutz-Gesetz, TTDSG*), regulating, among others, the telecommunications secrecy as well as the use of cookies and similar technologies on websites and apps
– Various general state acts (*Landesdatenschutzgesetze*) and state-level privacy laws for certain industries (for example, state hospital laws or state hospital data protection laws, such as the Bavarian hospital law (*Bayerisches Krankenhausgesetz, BayKrG*), which imposes limitations on hospitals on outsourcing the processing of patient data)

As a general rule, any processing of personal data is only permitted if either a statutory justification exists, or the consent of the data subject has been granted. The grant of consent must be clear and fairly detailed and based on the free decision of the data subject. Specific processing situations (for example, transfers of personal data outside the EU, or processing health or other sensitive data) may be subject to further restrictions. German and EU data protection law does not differentiate between consumers and non-consumers so that the requirements on the processing of personal data generally apply to the processing of any data of natural persons by a company, irrespective of whether that natural person acts in a personal or business context.

As data protection law is relevant whenever personal data is concerned, it has to be observed throughout all industries and in various contexts and plays a major role in legal compliance. Therefore, it includes but is not limited to IT outsourcing, e-commerce, online social communities and direct marketing. Also, the transfer of personal data within international groups of companies has become a major challenge for corporate compliance. With considerable accountability and documentation obligations as well as potential administrative fines of up to EUR 20m or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, data protection compliance needs to be a core element and requires early top management attention when planning to expand a business into Germany.

The applicability of the GDPR does not necessarily require any form of establishment in Germany or the EU. With its extraterritorial reach, the GDPR also applies in case non-EU businesses offer goods or services to data subjects located in the EU or monitor the behaviour of data subjects located in the EU.

Product liability

38. How are product liability and product safety regulated?

Civil liability for defective products in Germany based on the provisions of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) is, in principle, fault-based and can result from a breach of contract, a tort, or a breach of statutory safety provisions. However, fault is generally presumed if a defect is proven and the burden of proof lies with the manufacturer to rebut this presumption. As an exception, strict liability is provided for in the Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*), which implements Directive 85/374/EEC on liability for defective products (Product Liability Directive). The EU Parliament has adopted an new Product Liability Directive (Directive (EU) 2024/2853) in order to increase the product liability in relation to digital products. Under the new Product Liability Directive, software and digital production files will be expressly covered by the strict product liability regime. The new Directive extends the time of liability beyond market launch to include software updates and significant product modifications. It contains extensive disclosure obligations and facilitation of evidence for injured parties, which may require the disclosure of trade secrets. The new Directive shall apply to products placed on the market or put into service after 9 December 2026.

A seller (who is not necessarily the manufacturer) will be liable to the buyer for subsequent performance (remediation or subsequent delivery) regardless of fault if the product is defective, lacks the agreed qualities, or does not display the qualities usually expected of such a product within the warranty period (generally two years, or five years for building materials which have caused the defectiveness of a building). However, as a rule, a seller who is not the manufacturer will not be liable for damages caused by a product defect since the element of fault is missing. Furthermore, any damage claim against the seller must also be brought within the warranty period.

Non-contractual liability of the manufacturer of a product may arise out of the improper design or manufacture of the product, the provision of incomplete or incorrect instructions as to use and insufficient product monitoring. Claims for damages in this regard become statutorily time-barred within three years after the end of the year in which the injured obtains knowledge (or should have obtained knowledge without showing gross negligence) of the damage, the circumstances giving rise to a claim, and the identity of the debtor. Notwithstanding knowledge, in case of non-bodily injury a claim for damages will become statutorily time-barred ten years after it arose and in any event a maximum limitation period of 30 years after the date when the breach of duty occurred applies.

A party that purports to be the manufacturer of a product, in particular, by using its brand on the product, is also deemed to be the manufacturer under the Product Liability Act. The same applies to an importer to the European Economic Area (EEA). Compensation for personal injury and material damage caused by a defective product, but not the cost of repair to the product itself, can be claimed in tort. If safety risks of a product are discovered, there is an obligation on the manufacturer to at least warn the product user of such risks. A warning is deemed to be sufficient if it can be expected that the product user will observe it. This is particularly assumed in the case of non-consumers. As a rule, the manufacturer does not have to bear any costs of remediating measures. If issuing such a warning is deemed to be insufficient (which is particularly likely in the case of dangerous consumer products) an obligation to recall the product may arise.

Individuals (for example, members of a board, managing directors or responsible quality engineers) can be personally liable under both tort and criminal law if their individual responsibility for the defect and damage can be established, particularly in circumstances where personal injury or death have occurred as a result of improper product manufacturing or insufficient monitoring of product safety. Public authorities of the German federal states (*Bundesländer*) are responsible for monitoring the safety of products and equipment and are entitled to check their safety and compliance with harmonised product standards by obtaining samples of them as provided for under Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products, the Product Safety Act

(*Produktsicherheitsgesetz, ProdSG*) and other product-specific legislation. Economic operators may only place safe products on the market, must offer contact options for complaints and are obliged to co-operate with market surveillance authorities. The market surveillance authorities are entitled to order the stop of the sale of defective products or equipment or even to order a recall if it is deemed that the products pose a serious risk. The manufacturer, importer or seller who identifies a product safety risk must inform the competent market surveillance authority under the applicable EU directives and regulations. As of 13 December 2024, the ProdSG will be replaced by Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety (GPSR). Inter alia, the GPSR implements new information obligations for online retailers and enables the Commission to set up a traceability system for certain high-risk products.

Regulatory authorities

39. What are some of the key regulatory authorities relevant to doing business in your jurisdiction?

Competition

Main activities. The Federal Cartel Office (*Bundeskartellamt*) in Bonn is an independent competition authority whose task is to protect free and fair competition in Germany.

The main task of the Federal Cartel Office is to apply and enforce the Act against Restraints of Competition (ARC) (*Gesetz gegen Wettbewerbsbeschränkungen*, *GWB*) with a view to protecting competition in Germany. Its tasks include:

- Implementing the ban on cartels
- Merger control
- Control of abusive practices of dominant or powerful companies, including extended abuse control over large internet companies
- Review of procedures for the award of public contracts by the Federation (public procurement)
- Consumer protection
- Market Transparency Unit for fuels

(www.bundeskartellamt.de)

Product Safety

Main activities. Market surveillance is, in principle, a task of the German federal states (*Bundesländer*). Some of them have concentrated competences for non-food consumer products in a central authority for the whole federal state, others have several authorities for the districts of the federal state. The main task of the market surveillance authorities is the collection and evaluation of information in order to identify defect focal points and product flows, and the establishment and implementation of market surveillance programmes on the basis of which the products are checked. The market surveillance authorities must take the necessary measures if they have reasonable grounds to suspect that a product does not comply with the statutory safety requirements.

(https://ec.europa.eu/docsroom/documents/60716, provides a list of national market surveillance authorities; indicating for the German federal states only the respective highest state authority)

Data protection

Main activities. There are several data protection authorities at the federal and state level which are responsible for monitoring the application of the GDPR and other data protection laws (as described above). Such authorities may act on their own initiative (for example, random checks at randomly selected companies) or following data subjects' complaints. They are also active in promoting public awareness on data protection issues as well as in providing advice, such as by publishing general guidance. These authorities also have the power to enforce data protection law, for example, by carrying out investigations, issuing orders to amend/cease certain processing activities or by imposing fines (see question 37).

A list of all German data protection authorities is available at www.bfdi.bund.de/DE/Infothek/Anschriften_Links/anschriften_links-node.html (only available in German).

Other authorities

In addition, several other primarily federal regulatory authorities are relevant for regulated industries such as aviation, energy, financial services or insurance and state and local authorities are generally responsible for matters such as environment, public safety etc.

Other considerations

40. Is there anything else that is important relating to doing business in your jurisdiction?

While these Q&A give an overview of key recent developments affecting doing business in Germany as well as an introduction to the legal system, they are intended solely for general information and should not be construed as, or substitute for, legal advice with respect to specific matters, since such advice requires an evaluation of precise factual circumstances and often an assessment on a case-by-case basis. German counsel should be consulted as to all questions that arise with respect to the laws and other legal requirements discussed herein and otherwise potentially relevant for doing business in Germany.

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- Product Liability
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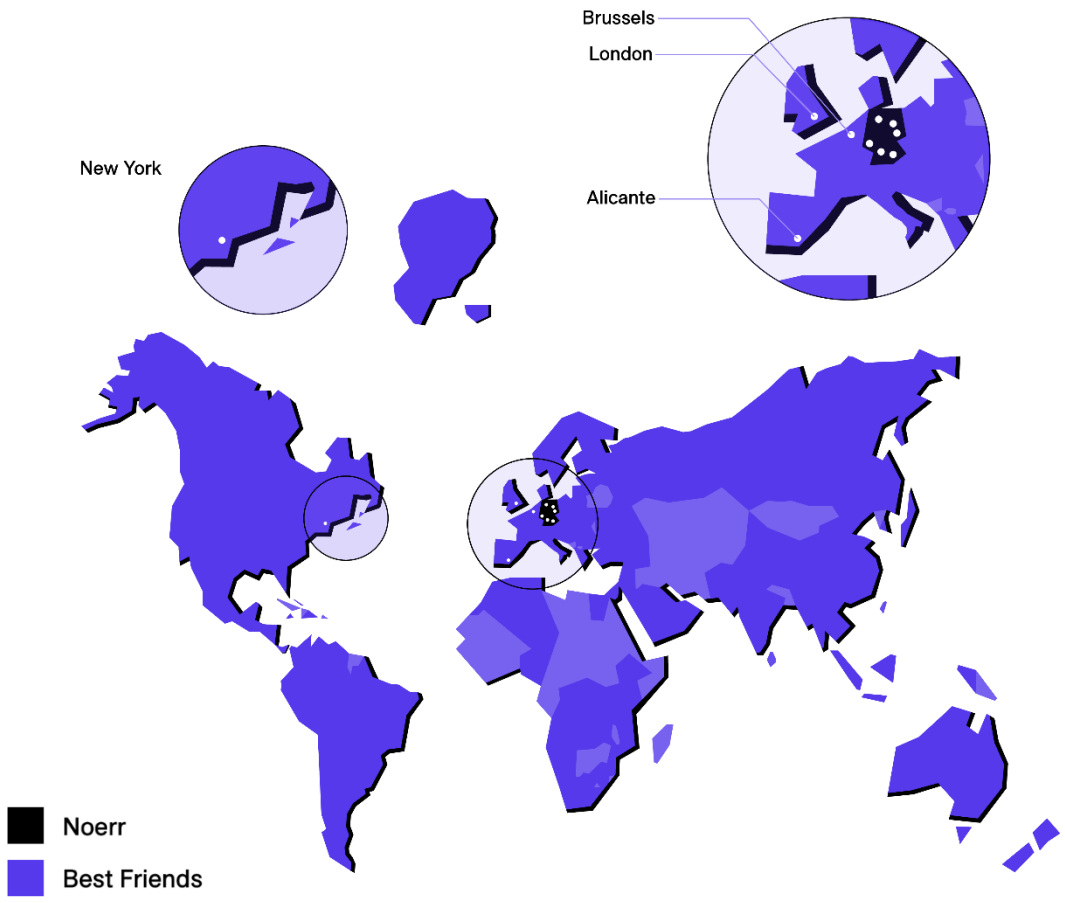
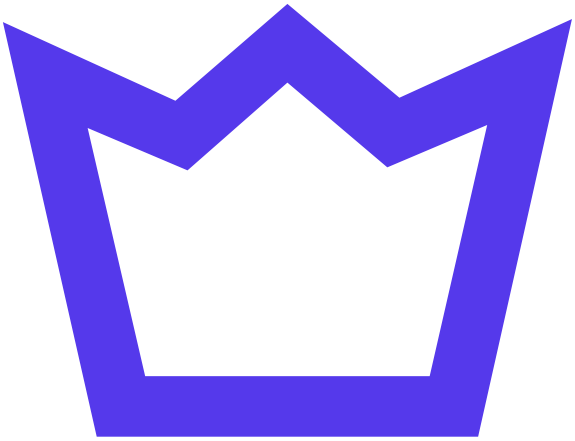


Awards that we have you to thank for



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JUVE Awards: Law Firm of the Year Real Estate & Construction

JUVE Awards: Law Firm of the Year Company Succession & Trusts

2021

JUVE Awards: Law Firm of the Year

JUVE Awards: Law Firm of the Year Banking & Finance

JUVE Awards: Law Firm of the Year Corporate

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Chambers Europe Awards: Law Firm of the Year

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