ALLEN & OVERY

Doing Business in Germany

A legal guideline for foreign investors

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Content

1. Purpose of the brochure

Germany is one of the most resilient economies in Europe and therefore very interesting for international investors. In the last few years, many investors from various jurisdictions have invested in Germany and in German companies. We believe that in the next few years there will be favourable conditions at place that will result in further investments in Germany. Since Allen & Overy has comprehensive experiences in cross-border transactions, we are well aware of concerns of international investors resulting from a lack of information and experience on the legal environment in Germany, and as such regularly requesting information on the legal requirements in order to better understand the environment and potential challenges when investing.

This overview shall provide a high-level summary on the legal environment in Germany, renowned for its stability and transparency. The World Economic Forum ranked Germany among the leading countries of 144 competitors for its judicial independence. Solid codifications and an effective enforcement system provide international investors with a secure legal framework and the possibility to quickly enforce their rights.

This brochure shall not be deemed comprehensive or conclusive, but will provide an overview for investors as a starting point and guidance. Our team at Allen & Overy is able to assist you from the very start of your endeavour by giving you comprehensive advice as regards doing business in Germany.

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2. Investment profile for Germany

2.1 Doing business in Germany

Germany has a social market economy, meaning that it embraces the spirit of free enterprise but tempered with certain controls and other administrative legal measures designed to prevent large economic participants from seriously damaging other interests. Laws against unfair competition, including antitrust provisions and for the protection of the environment as well as those protecting employees, illustrate this. The state does not encourage the development of specific industries but it does offer substantial subsidies and other support (particularly in research and development) likely to lead to new marketable products.

Germany is particularly attractive for foreign investors due to its stable and transparent political and legal environment. Other important advantages include the country's solid infrastructure and well-qualified workforce.

Where necessary, investor rights can be enforced by Germany's efficient judicial system. Reliable laws enable companies to plan investments effectively and licences granted by the public authorities provide a secure base for investment projects.

2.2 Foreign investment controls and thresholds

In principle, foreign direct investment (***FDI***) as well as day-to-day business activities in Germany are free from regulations. German law generally makes no distinction between Germans and foreign nationals regarding investments or the establishment of companies.

Germany has an open and welcoming attitude towards foreign direct investment (***FDI***). The legal framework for FDI in Germany favours the principle of freedom of foreign trade and payment transaction as laid down in the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* – ***AWG***).

Nonetheless, the AWG allows for the imposition of restrictions on inward and outward FDI for reasons of foreign policy, foreign exchange, or national security. Such restrictions have seldom been imposed but in the last months we observe a more restrictive approach of the German government that seeks to get a better overview and control on M&A activities of investors in particular from outside the EU and the EFTA (see in more detail below sub 5.5).

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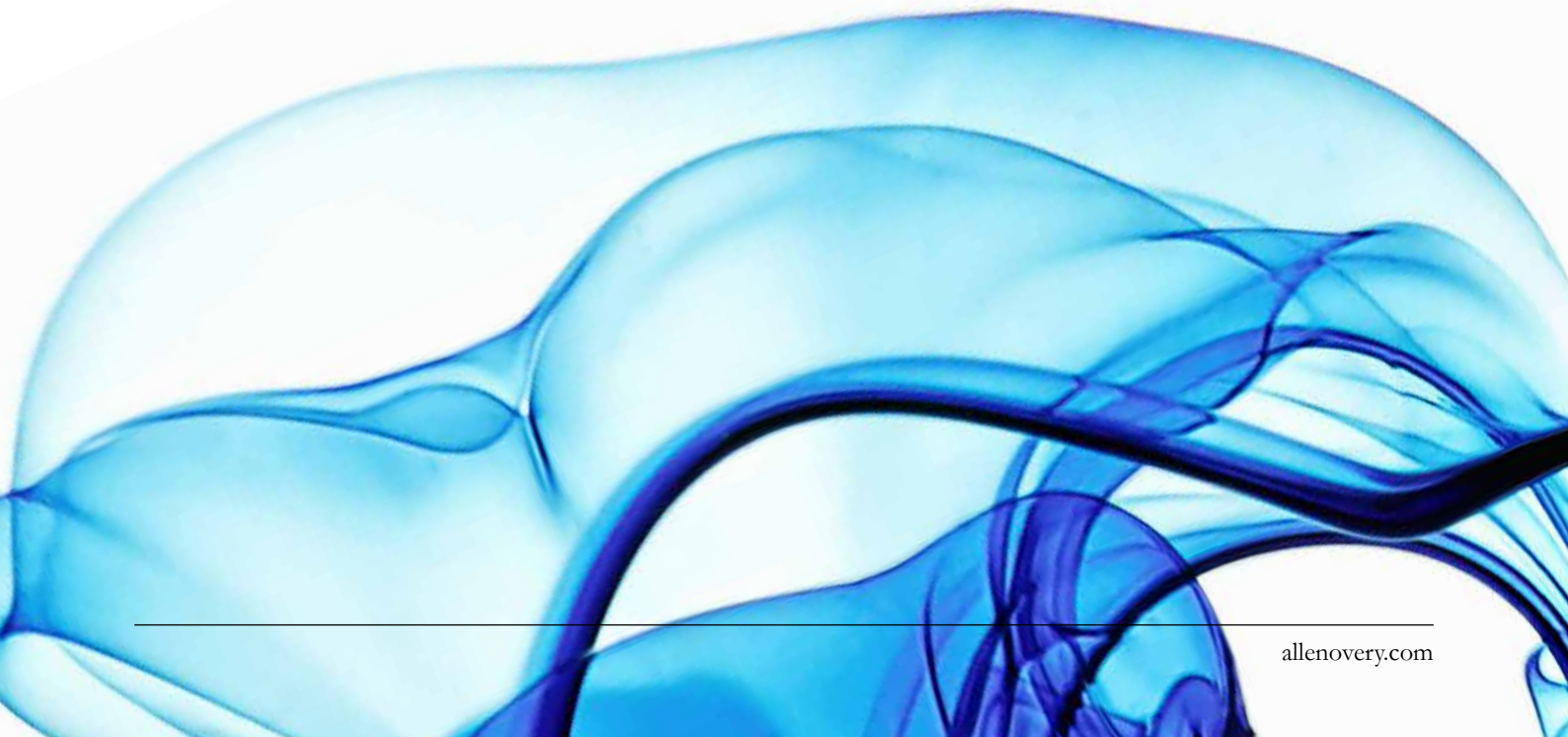
QUALITATIVE FACTORS ATTRACTIVE TO INVESTORS

- Germany is one of the world's largest single markets with transparent rules and regulations
- Foreign investors face no restrictions or barriers to currency transfers, capital transactions, real estate purchases, repatriation of profits, or access to foreign exchanges
- Stable and sound legal and social environment with predictable and reliable political institutions
- Business services and software underpin Germany's digital transformation
- Professionally regulated judiciary and civil service institutions
- Secure contractual agreements
- Property strictly protected
- Free and open markets



3. Country briefing

3.1. Economic and banking conditions

3.1.1 Economics

Germany has a social market economy with a highly skilled labour force, a large capital stock, a low level of corruption, and a high level of innovation. It has one of the largest and most powerful national economies in Europe, with EUR2.6 trillion, the fourth largest by nominal gross domestic product (***GDP***) in the world, the fifth largest by purchasing power parity, and was the biggest net contributor to the EU budget in 2016. The service sector contributes approximately 71% of the total GDP, industry 28% and agriculture 1%.

Germany is an advocate of closer European economic and political integration. Its commercial policies are increasingly determined by agreements among EU members and by EU legislation. Germany introduced the common European currency, the Euro, on 1 January 2002. Its monetary policy is set by the European Central Bank, which is headquartered in Frankfurt am Main.

Of the world's 500 largest stock-market-listed companies measured by revenue in 2017, the Fortune Global 500, 29 are headquartered in Germany. Thirty Germany-based companies are included in the DAX, the German stock market index. Germany is recognised for its specialised small and medium enterprises. Around 1,000 of these companies are global market leaders in their segment and are labeled hidden champions.

3.1.2. Freedom of trade and operational permits

Due to Germany's liberal constitution, the operation of a business in Germany does, as a general rule, not require a permit, but a simple notification (*Gewerbeanmeldung*) with the local authorities is sufficient. Only where certain risks are associated with the operation of a business, which make a closer supervision by the public authorities necessary, permits are required. For instance, the operation of industrial sites usually requires operational permits, as the environment, residents and employees may be affected by the operation. In this context, emissions control permits (*immissionsschutzrechtliche Genehmigungen*) or permits under water laws (*wasserrechtliche Genehmigungen*) are of most practical relevance. Further sectors in which operational permits may be required include healthcare and infrastructure. The same may apply in the finance and insurance sectors.

Except in very few cases, where it is explicitly stated by law, the question of whether a permit is granted or not does not depend on whether there is a (public) need for a certain business. Usually, the law lays down the requirements which must be complied with to obtain a permit. If those are complied with, the permit has to be granted by the authorities.

Germany is organised as a federal republic, consisting of 16 federal states. Even if legislation is to a large extent adopted on the federal level and applicable in all federal states, it is the competence of the federal states to apply the laws (ie in particular to grant permits) and supervise compliance. Thus, companies with a number of sites throughout Germany usually deal with a number of different authorities. German authorities are subject to a number of rules which ensure transparent, reliable and fair procedures. Alleged infringements of the law can be brought to specific administrative courts.

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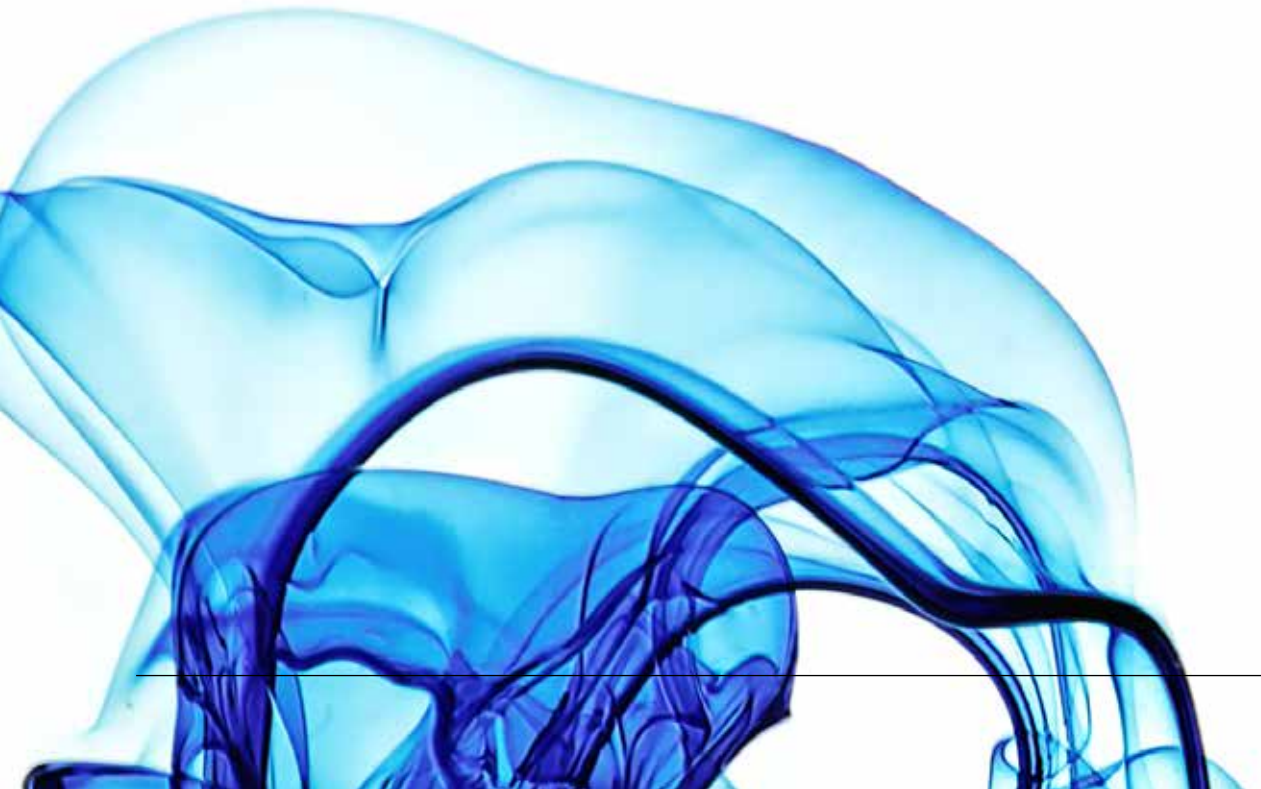
If shares in such company are acquired or a company holds operational permits, the aim is usually to keep the operational permits in place as this ensures a smooth transition. As a general rule, permits are not affected if a business is acquired by way of a share deal, but – depending on the individual permits – may be affected in case of an asset deal. Our corporate and public law specialists closely cooperate to find a transaction structure which allows for the perpetuation of the operational permits after closing.

3.1.3 Banking

The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – ***BaFin***) ensures the proper functioning, stability and integrity of the German financial system. The BaFin unites the supervision of banks and financial services providers, insurance undertakings and securities trading. Under its solvency supervision, BaFin ensures the ability of banks, financial services institutions and insurance undertakings to meet their payment obligations. Through its market supervision, BaFin also enforces standards of professional conduct which preserve investors' trust in the financial markets. As part of its investor protection, BaFin also seeks to prevent unauthorised financial business.
In connection with this responsibility, BaFin is entitled to conduct investigations, require disclosure of documents and/or information, prescribe appropriate remedies in case of non-compliance and impose administrative fines in certain cases of non-compliance. Finally, BaFin can also forward cases of misconduct to the competent prosecution authorities (*Staatsanwaltschaften*) in the event that such misconduct is subject to criminal sanction.



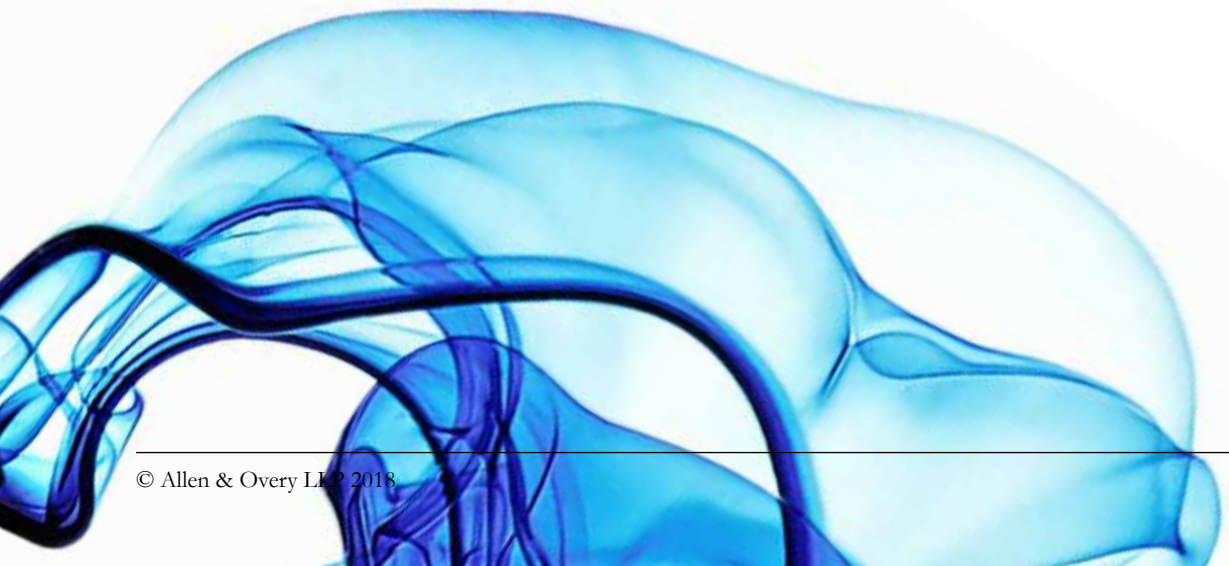
3.2 Visa and residence permits

Whereas citizens of an EU or EFTA Member State do not require a visa or work permit to enter Germany, under the German Residence Act (*Aufenthaltsgesetz* – ***AufenthG***) all other foreigners require, as a general rule, a residence title for stays in the country. Nationals of certain countries are, however, exempt from the requirement to be in possession of a visa when crossing the German border. This applies to nationals of Australia, Israel, Japan, Canada and the United States of America.

Under the Visa Code of the EU – Regulation (EC) No 810/2009 – third-country nationals may be granted a so-called uniform visa, which is valid for the territory of the Schengen area (including a large number of EU Member States plus Norway, Iceland, Liechtenstein and Switzerland). This visa – also called Schengen visa – may be issued for one, two or multiple entries and has a period of validity of up to five years. The Visa Code explicitly states that a multiple-entry visa may be issued for business persons proving the need or justifying the intention to travel frequently. The holder is only allowed to stay for up to 90 days within each 180-day-period.

A national visa of "D" category (so-called long-stay visa) is required for stays of longer duration and is granted to individuals who are to be studying, working or permanently residing in Germany. Holders of such visa may not only stay in Germany, but can move freely for up to three months in any six-months-period in the Schengen area.

Whereas citizens of the EU or of the European Free Trade Association (***EFTA***) Member States do not require work permits, it is different with non-EU/EFTA citizens. The mere fact of holding a Schengen visa does not allow for working in Germany. Non-EU/EFTA citizens require a work permit that is called "*Aufenthaltsgenehmigung*" (literally: residence permit) in Germany. The Residence Act distinguishes between temporary and permanent residence permits. Temporary residence permits are issued for specific purposes only. On that basis, a person is allowed to stay in Germany for education or training, gainful employment, humanitarian, political or family reasons. Permanent residence permits are only issued once a person has held a temporary residence permit for at least five years and meets additional requirements such as a secure income, no criminal records and adequate German language skills.



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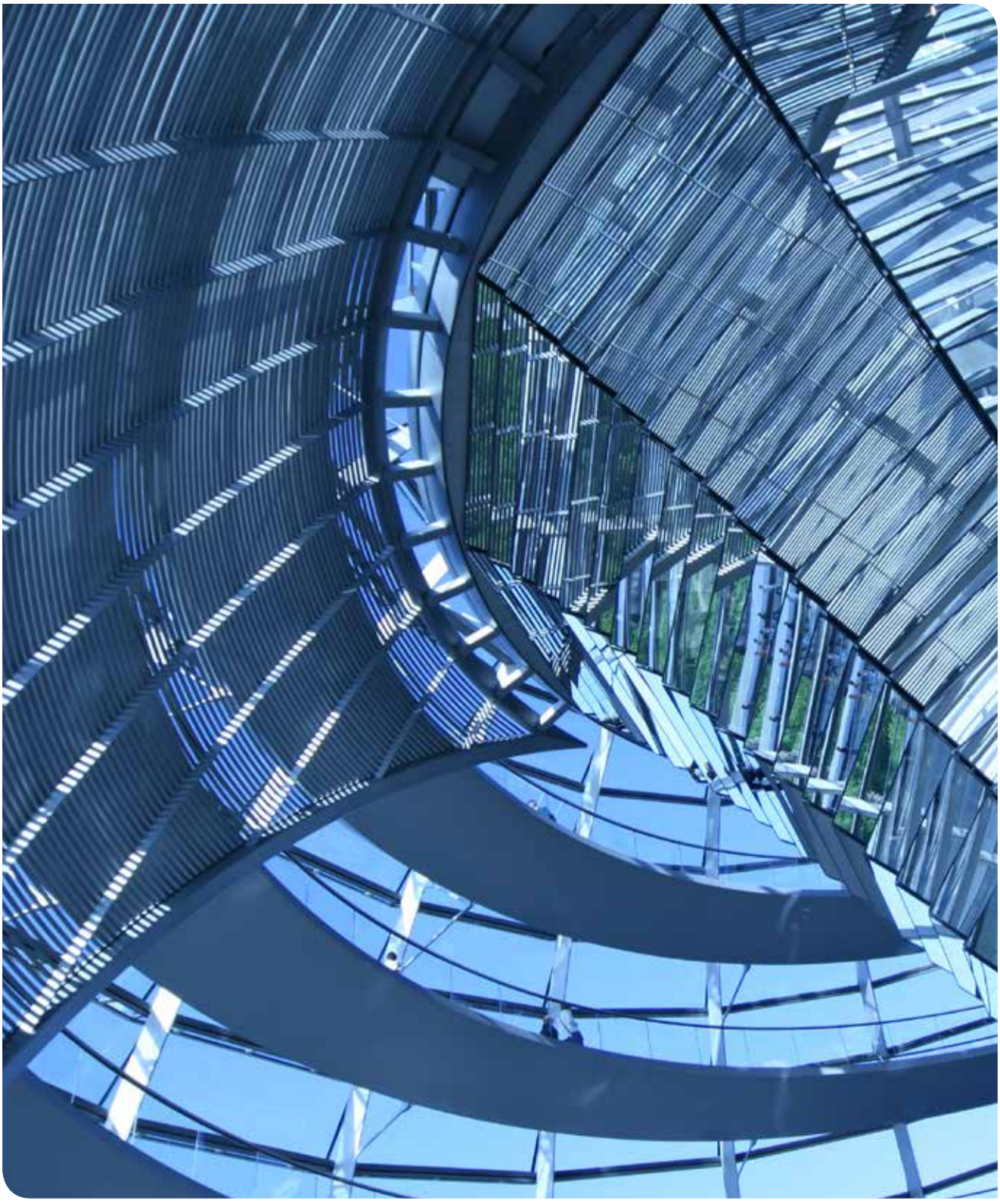

4. Germany's legal system – Independence and effectiveness

4.1 Politics overview

Germany is a federal parliamentary republic, and federal legislative power is exercised in the *Bundestag* (the parliament of Germany) and the *Bundesrat* (the representative body of the *Länder*, Germany's regional states). There is a multi-party system that, since 1949, has been dominated by the *Christian Democratic Union* (CDU) and the *Social Democratic Party of Germany* (SPD). The judiciary of Germany is independent of the executive and the legislature. The political system is determined in the 1949 constitution, the Basic Law (*Grundgesetz* – ***GG***), which remained in effect with minor amendments after 1990's German reunification. The constitution emphasises the protection of individual liberty in an extensive catalogue of human and civil rights and divides powers both between the federal and state levels and between the legislative, executive and judicial branches.

4.2 Legal system

The Federal Republic of Germany has a civil law framework and is a democratic constitutional state that guarantees stable laws, the protection of liberties, and equality before the law. This is essentially ensured by the *Grundgesetz*, where the principles of the democratic constitutional state are perpetuated. The German Federal Constitutional Court (*Bundesverfassungsgericht*) is Germany's highest and most important judicial body. The jurisdiction of this court has had an enormous impact on the development of the Federal Republic of Germany and is known as the guardian of the constitution.

The German legal system differs fundamentally from the Anglo-Saxon common law system, in which courts rely mainly on precedents from prior cases (case law). In Germany, judges base their judgements in general on legal codes. The legal codes delineate abstract legal principles and the judges must decide the specific cases on the basis of these standards. Although there are numerous landmark decisions, court decisions in Germany in general do not have the same importance as the case law in the Anglo-Saxon countries.

In the Federal Republic of Germany, the administration of justice is divided into five branches: ordinary (ie civil and penal courts), labour, administrative, social and financial courts.

Ordinary courts are organised in the following tiers, each of increasing importance: the local courts (*Amtsgerichte*), the regional courts (*Landgerichte*), the higher regional courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*).

In a normal case, there are three instances. The claimant and the defendant can appeal against a court ruling. Thereupon, the litigation goes before a "higher" court and a ruling is handed down. If the third level has been reached, there is no longer any right of appeal and the litigation thus comes to an end.

Many legal systems in other countries are based on the model of Germany. The internationally-recognised high level of legal stability attracts foreign companies and is to the benefit of investments and entrepreneurial activity in the country.

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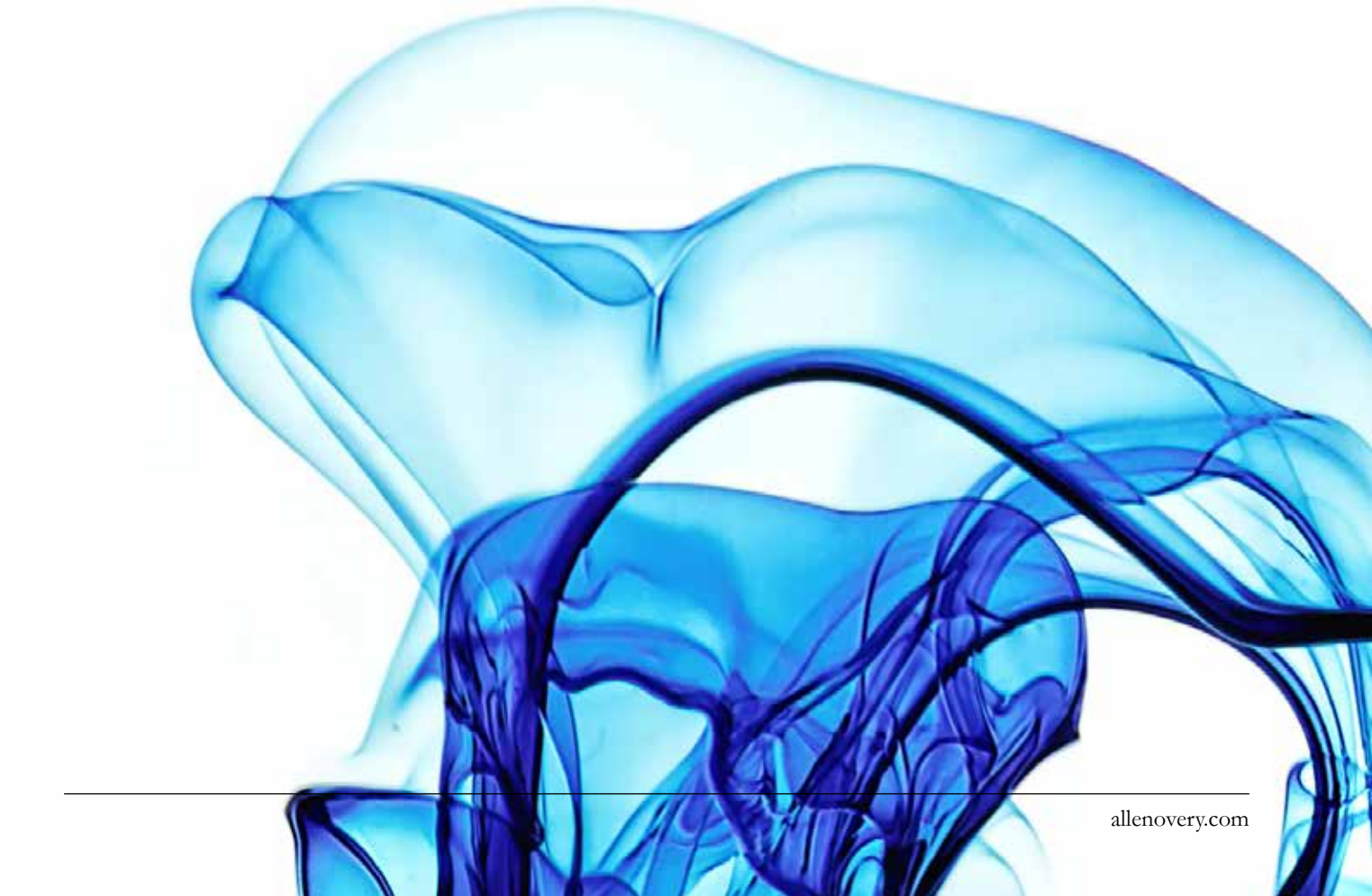
4.3 Adoption of legislation

In the Federal Republic of Germany, the judiciary is independent of the executive and the legislature. The making of law is a task performed by the country's parliaments. The German *Bundestag* is therefore the most important organ of the legislative. It decides on all laws that fall within the sphere of competence of the German Federation in a legislative process that also requires the participation of the *Bundesrat*, a legislative body that represents the sixteen federated states of Germany at the national level.

The Members and parliamentary groups of the German *Bundestag* are entitled to introduce new or revised pieces of legislation in the *Bundestag* as bills – a right also enjoyed by the *Bundesrat* and the Federal Government. It is in Parliament that such bills are debated, deliberated and voted on in accordance with a precisely regulated procedure.

Since, under Germany's federal system, the federal states hold a considerable share of the powers of the state, the *Bundesrat* also participates in the adoption of legislation. All acts are submitted to the *Bundesrat* for it to vote on and – depending on the matter of the proposed legislation – it may even cause the rejection of some proposals.



4.4 German law and the law of the European Union

German law has, to a large extent, been influenced by legislation of the EU.

For instance, the telecommunication and energy sectors in the entire EU were liberalised on the basis of EU law. Those sectors have significantly changed since they were opened up to competition. As the sector legislation is based on EU law, the legal framework is very similar in all EU Member States. Once compliant with the German requirements, this makes it easy to expand a business to other EU Member States, as more or less the same requirements will apply.

Also, the requirements applying to the placing on the market of a variety of products have been harmonised on EU level. This legislation in most cases imposes obligations regarding the protection of health, safety, and/or the environment. Those requirements apply in the entire EU and all Member States must accept products on their markets which comply with the regulations. For instance, such harmonised legislation is in place for toys, electrical and electronic equipment, pressure equipment and machinery. This allows selling products compliant with the EU rules in the entire EU. Even if products do not fall within the scope of harmonised EU legislation, there is a general principle of free circulation of goods in the EU. Thus, products which may be placed on the market in one Member State must generally be accepted by other Member States, unless there are justified reasons for a prohibition, such as safety issues.

Companies may be granted state aid in Germany, eg for R&D projects or when operating in regions where there is a need for the creation of jobs. The principles under which state aid can be granted are also based on EU legislation.

Another field of German law that is significantly influenced by European requirements is the field of public procurement. A comprehensive set of rules governs the award of public work, supply and service contracts including, for example, Public Private Partnerships or the award of concessions in the infrastructure sector.

4.5 International treaty rights for pursuing remedies against local governments

At present, Germany has concluded around 155 bilateral investment treaties (***BIT***) and is a contracting party to several multilateral investment treaties (such as the Energy Charta Treaty). Furthermore, Germany is a member of the World Bank's International Centre for Settlement of Investment Disputes (***ICSID***) which provides rules for the conduct of investment disputes. The investment treaties concluded by Germany regularly set out provisions ensuring non-discrimination, a fair and equitable treatment, appropriate compensation in the event of expropriation and free transfer of payments in respect of investments made by the contracting state party or its citizens/ companies. The investment treaties provide for an effective state-to-state or investor-to-state dispute settlement mechanism on a regular basis. Thus, the investor can directly (or, as the case may be, indirectly via the state of its origin) pursue claims to protect its local investment against the Federal Republic of Germany. This may be in arbitral proceedings or state court proceedings depending on the terms of the BIT. A final award or court decision will regularly be recognised and enforced in Germany as far as its state immunity is not affected.

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5. Initiating a business presence in Germany – Corporate structuring and corporate governance

5.1 Establishing a business presence

Foreign investors can choose between a variety of legal forms for conducting business in Germany. Existing companies can also conduct business via a German branch office. Decisive criteria for the choice of legal form are generally the intended function of the shareholders, liability and terms of taxation.

The basic structure of all company forms is stipulated by law which provides for predictability and legal certainty. The same legal conditions apply for foreign and local entrepreneurs.

The major legal forms for conducting business in Germany are

(1.) Registered cooperative society (*Eingetragene Genossensschaft* – ***e.G.***)

(2.) Registered association (*Eingetragener Verein* – ***e.V.***)

(3.) Corporations

- Limited liability company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)
- Stock corporation (*Aktiengesellschaft* – ***AG***)
- European Company (*Societas Europaea* – ***SE***)
- Partnership limited by shares (*Kommanditgesellschaft auf Aktien* – ***KGaA***)
- Limited liability entrepreneurial company (*Unternehmergesellschaft* – ***UG***)

(4.) Partnerships

- Civil law partnership (*Gesellschaft bürgerlichen Rechts* – ***GbR***)
- Silent partnership (*Stille Gesellschaft*)
- General partnership (*offene Handelsgesellschaft* – ***oHG***)
- Limited partnership (*Kommanditgesellschaft* – ***KG***)
- Professional partnership (*Partnerschaftsgesellschaft* – ***PartG***)

(5.) Special forms and variants

- GmbH & Co. KG and GmbH & Co. KGaA
- AG & Co. KG and AG & Co. KGaA

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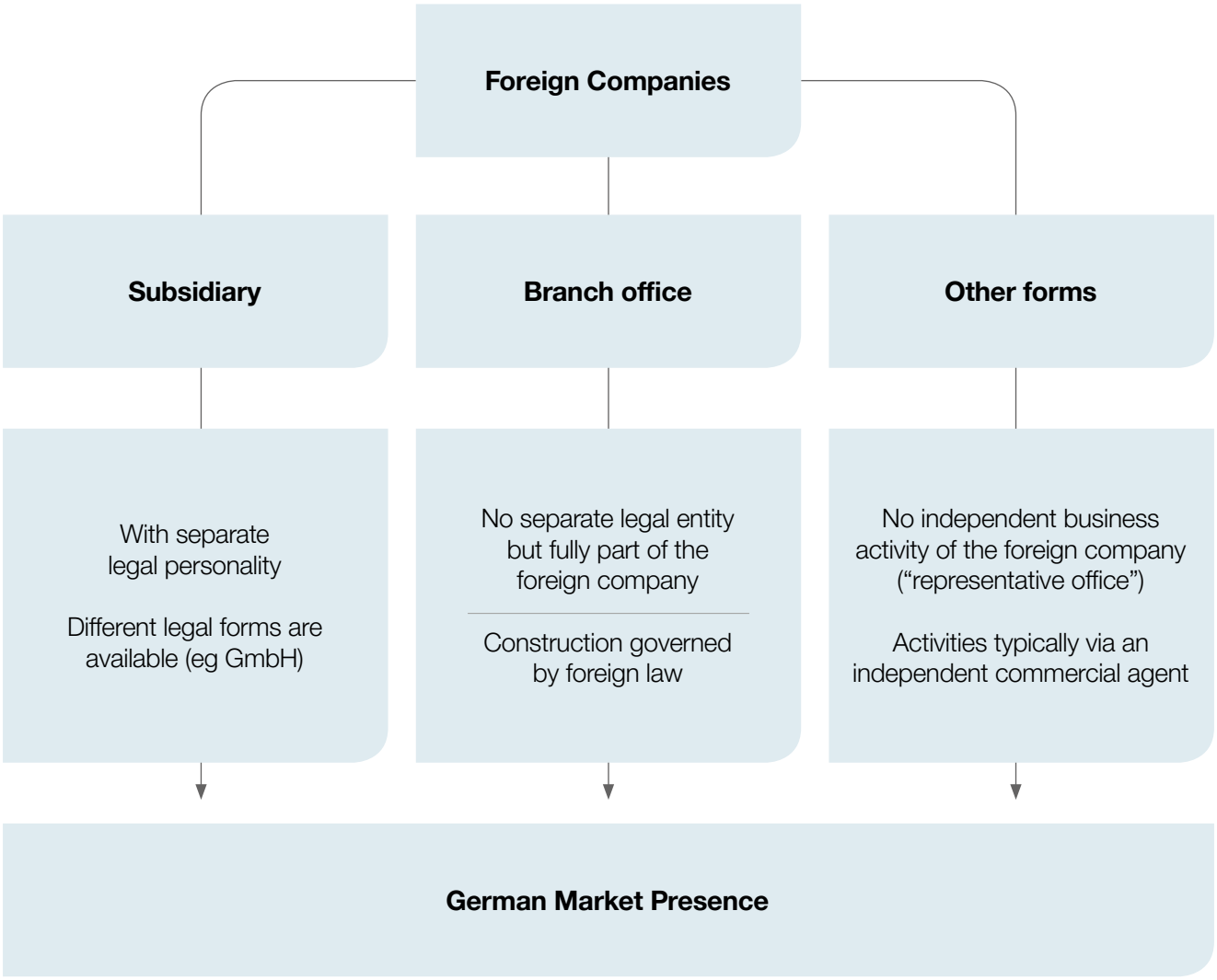
THERE ARE SEVERAL WAYS OF TAKING UP COMMERCIAL ACTIVITIES IN GERMANY



For a detailed overview on some of the most practically relevant legal forms (in particular the *GmbH*, the *AG* and the *KG*), please see **Exhibit 5.1** attached hereto.

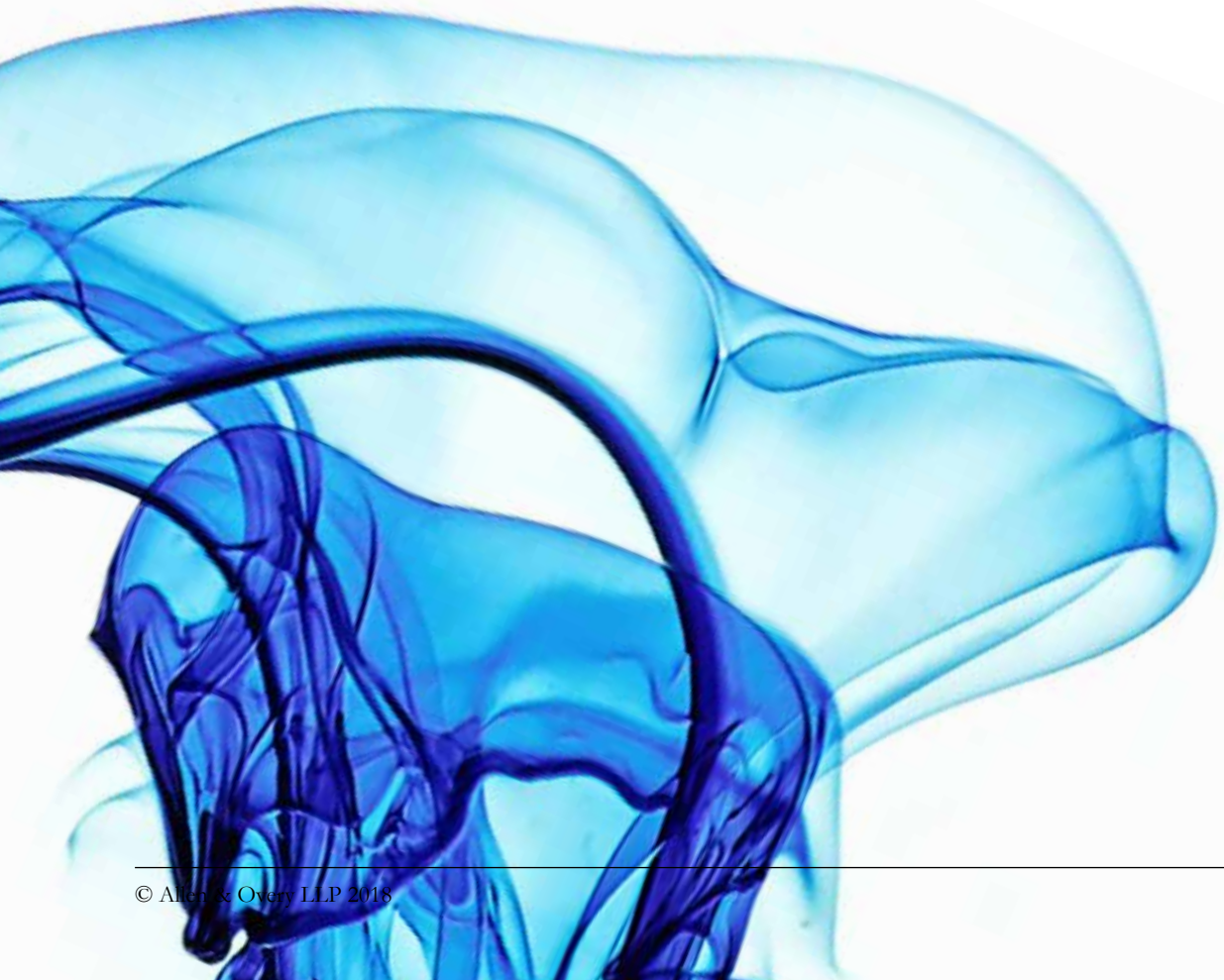
5.2 Licencing and registration

A foreign company must either register as a company in Germany or be represented by a representative office or subsidiary.

In case of conducting their business as a legally dependent operating unit in Germany or through a branch within the country, the following requirements must be fulfilled. The trade of the foreign company, acting through a legally dependent operating unit, has to be registered at the local office of trade and commerce (*Industrie- und Handelskammer* – ***IHK***). Therefore, a translated certificate of registration of the foreign headquarter is necessary.

In case of acting through a branch, a notary public has to register the branch at the local court for registration in the commercial register (*Handelsregister*). Therefore, the notary public needs a translated and certified deed of registration of the foreign headquarter and a power of attorney of the managing board and the branch.

In some fields of business (eg banking, financial services, insurance, pharmaceuticals, nuclear energy, public transportation and gastronomy), a public licence is required for the operation of a business. These requirements apply without any difference to national and foreign companies.



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5.3. Securities legislation

The German securities markets are basically divided by law into two different markets, namely a regulated market (the Regulated Market – *Regulierter Markt*) and a regulated unofficial market (the Open Market – *Freiverkehr*). These markets differ in terms of approach to the regulation of trading, listing and continuing obligations. The Regulated Market is the most regulated of the German markets in terms of listing requirements and continuing obligations. The least regulated market is the Open Market. The main Stock Exchange in Germany is the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse* **– *FWB***). All German securities markets and providers of financial and securities trading services are subject to national supervision by BaFin.

The securities markets in Germany are, *inter alia*, regulated by the following laws:

1 Stock Exchange Act (*Börsengesetz* **– *BörsG***) – The BörsG comprises basic principles regarding the organisation of stock exchanges and other securities markets and the trading and listing of securities. Furthermore, the BörsG authorises the government to enact provisions and regulations to protect the public and to ensure the proper conduct of securities trading.

2 Stock Exchange Admission Regulation (*Börsenzulassungsverordnung* **– *BörsZulV***) – The BörsZulV comprises, *inter alia*, listing requirements, listing procedures and disclosure obligations for securities for which an application for admission to the Regulated Market has been filed or will be filed.

3 Rules of Exchange (*Börsenordnung* **– *BörsO***) – The BörsO regulates the internal organisation of the respective stock exchange, the details of the listing procedure, the proper conduct of trade and price fixing and the publication of all information regarding prices and volumes. Furthermore, the BörsO also governs the composition of the management of each Stock Exchange and the appointment of its members.

4 Rules for the Open Market (*Freiverkehrsbedingungen*) – These rules of each stock exchange provide for, in particular, the requirements of listing on the Open Market or Entry Standard of the FWB.

5 Investment Act (*Investmentgesetz* **– *InvG***) – The InvG regulates the distribution and sale of interests, participations and shares in domestic and foreign investment funds in Germany.

6 German Banking Act (*Kreditwesengesetz* **– *KWG***) – The KWG forms the statutory framework for banking and financial service activities and focuses on the protection of creditors and bank depositors.

7 Securities Trading Act (*Wertpapierhandelsgesetz* **– *WpHG***) – The WpHG focuses on the regulation of trading with securities, financial instruments, futures, derivates and similar financial products. In addition, it stipulates the obligation to disclose changes in interests in stock of corporations listed on the Regulated Market and to disclose other important information relating to such listed companies (eg annual financial accounts, quarterly reports or invitation and agenda of the annual general meeting). Furthermore, the WpHG contains certain specific provisions against insider trading and manipulation of stock exchange quotations and stipulates certain rules of conduct for financial service institutions providing financial services and ancillary services.

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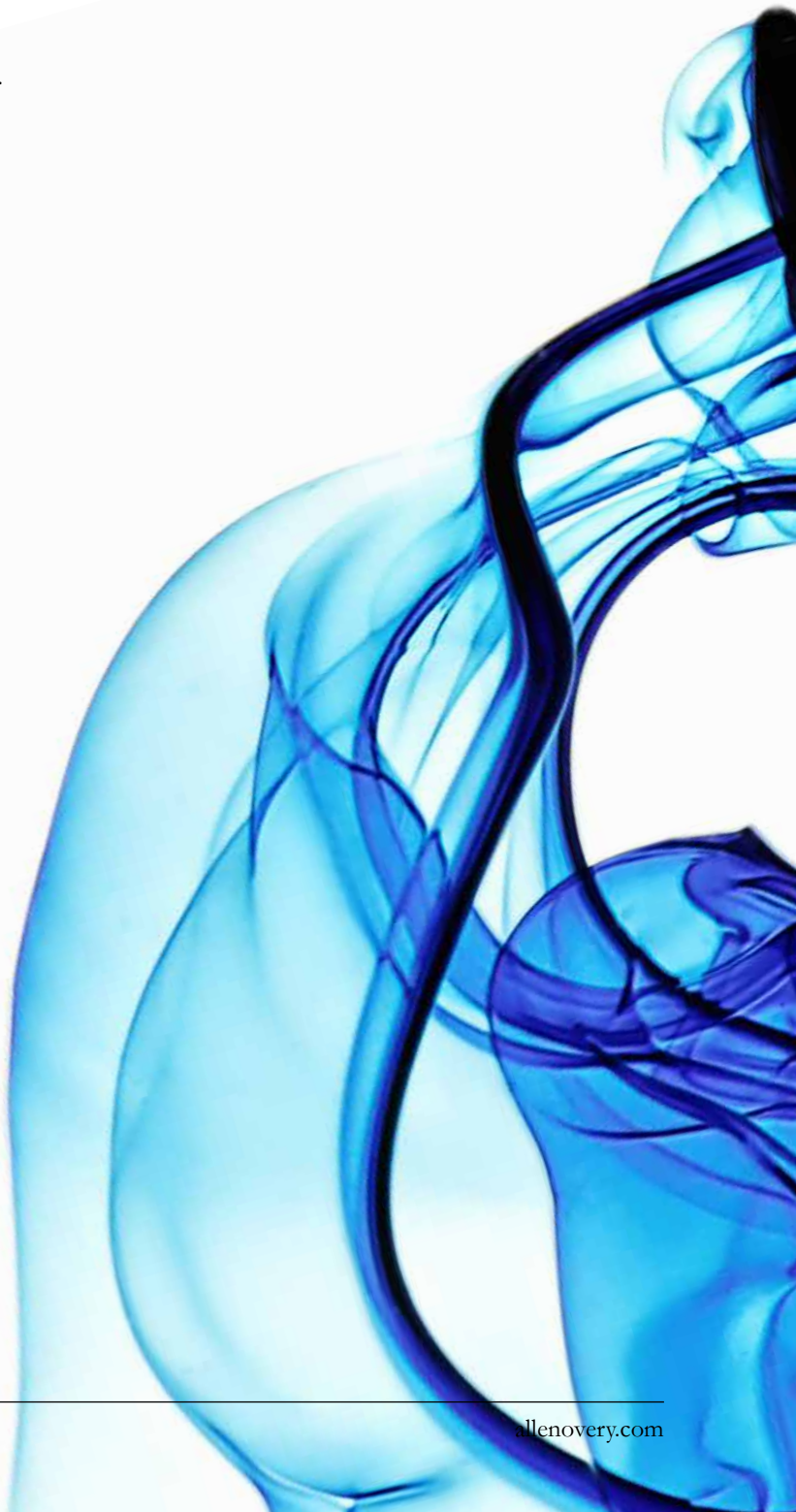
8 Securities Prospectus Act (*Wertpapierprospektgesetz – **WpPG***) – The WpPG regulates prospectus requirements for the offering of tradable securities and the exemptions from such requirements. It furthermore stipulates certain principal rules as to form and mandatory content of a prospectus, prospectus approval by BaFin and prospectus publication.

9 Security Prospectus Regulation (*Prospektverordnung* (EG) Nr. 809/2004 – ***PVO***) – The PVO stipulates, in particular, the details as regards mandatory content, incorporation by reference and publication of prospectuses.

10 German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz – **WpÜG***) – The WpÜG stipulates the form, content, procedural rules and publication requirements applying to public takeover offers and furthermore stipulates under which circumstances a mandatory takeover offer must be submitted. Accordingly, the WpÜG applies only to shares in stock corporations listed on the Regulated Market and securities representing such shares (eg options, convertibles).



5.4 Pre-transaction restrictions and disclosure requirements

5.4.1 Public M&A – Regulation of takeovers

Particular rules apply if a party seeks to obtain control of a public listed company, ie if it obtains at least 30% of its voting rights (as defined by the WpÜG), a takeover offer (*Übernahmeangebot*) is mandatory. This requirement should be considered if an investor seeks to acquire a substantial participation in a public listed company.

WpÜG

Public takeovers are regulated by the WpÜG and the Offer Ordinance (*WpÜG-Angebotsverordnung* – ***WpÜG-AV***). Other legislation not specific to public takeovers may also apply, in particular the rules of the German Stock Corporation Act (*Aktiengesetz* – ***AktG***) and the Securities Trading Act (*Wertpapierhandelsgesetz* – ***WpHG***).

Compliance with the WpÜG is regulated by BaFin. In particular, BaFin's powers include: (i) prohibiting the exercise of voting rights in shares; (ii) preventing the bidder from making a proposed offer that does not comply with statutory requirements, and from making any subsequent offers for one year; and (iii) imposing fines of up to EUR1 million.

The WpÜG regulates any public offer (*öffentliches Angebot*) for the acquisition of securities which were issued by a target company having its registered office in Germany or in another member state of the EEA. In each case, it is necessary that the shares of the target company are admitted for trading on an organised market in Germany or any other member state of the EEA.

According to the general principles of the WpÜG, the holders of securities of the target company which belong to the same class shall be treated equally and the offeror and the target company must implement the procedure in a speedy manner. The target company must not be hindered in its business activities for more than a reasonable period of time. Furthermore, in case of a mandatory or voluntary offer, holders of securities of the target company must be offered a certain minimum price, must have sufficient time and adequate information to be able to make an informed decision about the offer and the board of management and supervisory board of the target company must always act in the interests of the target company.

MAR and WpHG

The Market Abuse Regulation (*Marktmissbrauchsverordnung* – ***MAR***) as well as several accompanying European regulations regulate *inter alia* insider trading and are directly applicable in Germany in contract to the EU directive. Officers of a company cannot pass any information to a third party regarding inside knowledge such as a contemplated public takeover that is not publicly known, unless the disclosure is justified by operational interest of the company or is legally required. Officers must also take appropriate measures to ensure that the distribution of insider information is restricted internally. The MAR also provides for regulations in respect of market sounding.

The MAR and WpHG deal with managers' transactions. The officers of the target (and their spouses and close relatives as well as certain legal persons closely related to the officers) must notify the target and the BaFin of any personal acquisitions and disposals of target shares exceeding a *de minimis* threshold of EUR5,000 per annum.

Before announcing a public takeover offer, the bidder may acquire target shares through the capital market or by package sales. However, the bidder must notify the target and the BaFin of any acquisition of shares through which its aggregate voting rights reach or exceed certain thresholds.

Thus, a company must notify the target and the BaFin once it obtains 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 75% of the target's voting rights. The aggregation of voting rights resulting from shares and voting rights resulting from comparable financial instruments that entitle their holders to acquire shares carrying voting rights (such as options or swaps) may trigger a further notification obligation. If the shareholder fails to do so they face individual fines of up to EUR10m or 5% of the total turnover of the group of the bidder.

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5.4.2 Private M&A – Regulation of takeovers

Apart from industries where special regulatory regimes apply (eg insurance or financial industry), the legal framework of private M&A transactions is, in principle, governed by general contract law and does not follow the strict rules of MAR, WpHG and WpÜG. Except from regional specifications, *inter alia* resulting from statutory law requirements, the contract documentation and transaction structures within private M&A transactions correspond, in principle, to international standards.

5.4.3 Financial services activities

German credit, financial services, and payment services institutions as well as (re-)insurance companies and investment companies (*Kapitalverwaltungsgesellschaften*) are subject to an authorisation requirement and to close supervision by BaFin.

The German Banking Act (*Kreditwesengesetz* – ***KWG***) stipulates that any person who performs banking activities (eg accepting deposits) and/or financial services on a commercial basis requires prior authorisation by BaFin, save for certain exemptions further detailed in the KWG. The provision of banking and/or financial services without prior authorisation may constitute a criminal offence punishable on indictment by a term of up to five years of imprisonment and/or a fine. It may give further rise to damage claims.

Generally speaking, credit and financial services institutions from states outside the European Economic Area (***EEA***) may:

– establish a subsidiary and/or a branch in Germany for purposes of providing banking and/or financial services there. Such subsidiary/branch needs to be authorised by BaFin;

– establish a representative office in Germany which needs not to be authorised but may not market products or banking/financial services there;

– apply, under certain circumstances, for an exemption from authorisation requirements for the cross-border provision of services into Germany. Any such application is subject to formal and material preconditions. It is at the discretion of BaFin as to whether an exemption will actually be granted;

– render services on a cross-border basis into Germany, but only and exclusively upon the request of a (potential) customer (reverse solicitation). BaFin has issued detailed guidance on the scope of this exemption.

Credit and financial services institutions from EEA states other than Germany may conduct business requiring a licence there, not only by establishing a branch/subsidiary or under the reverse solicitation exemption but also on a cross-border basis – without having a physical presence in Germany – under the so-called notification procedure (EU-Passport).

The application for a licence is subject to various formal and material requirements, the scope of which depends on the kind of licence in question. Basically, entities applying for a licence must disclose to BaFin holders of a significant participating interest and the size of such interest. A significant participating interest is deemed to exist if at least 10% of the capital of, or the voting rights in, a credit/financial services institution is held directly or indirectly or if a significant influence can be exercised on the management of the credit/financial services institution in which a participating interest is held. Additional requirements may apply eg with regard to minimum capital, minimum number of board members, the provision of a business plan etc.

The key ongoing obligations for German credit and financial services institutions usually include: (i) compliance with capital requirements; (ii) compliance with organisational requirements and conduct rules; as well as (iii) compliance with reporting and disclosure obligations.

Please note that this outline is limited to banking and financial services. It does in particular not cover payment services and product specific selling restrictions as well as conduct rules.

5.4.4 Antitrust

A merger control filing will be required where the parties to a transaction have turnover exceeding certain thresholds. While concentrations that have a Community dimension must be notified to the European Commission (***EC***), those that do not meet this criterion may need to be notified to the Federal Cartel Office (*Bundeskartellamt* – ***FCO***).

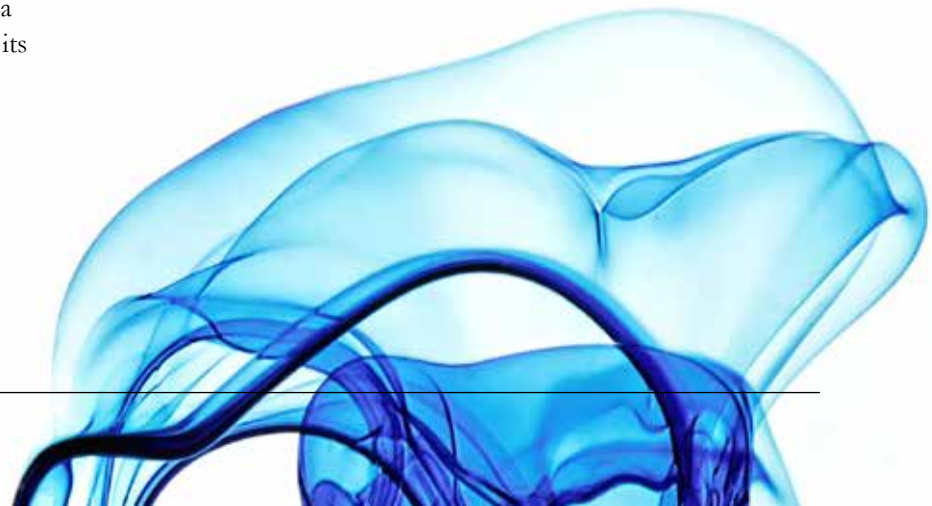
The scope of German merger control is – compared to other developed countries – broad and covers, for example, the acquisition of non-controlling minority stakes and the formation of non full-function joint-ventures. The parties will not be able to complete a notifiable transaction until the EC or the FCO has issued a clearance decision. In straightforward cases, this will take approximately 20 to 25 business days, but for complex cases where competitive concerns arise, the investigation period may be much longer (and may stretch to 160 business days). If the parties fail to notify a transaction or violate the standstill obligation (also known as 'gun jumping'), they may be subject to severe fines. It is therefore important to consider merger control carefully at the outset of any transaction process and, in particular, to build any potential notifications into the deal timetable.

Beyond merger control, companies doing business in Germany are subject to the general EU and German antitrust rules. These rules capture anti-competitive agreements entered into between competing companies, for example to fix prices, share markets or customers, rig bids or exchange commercially sensitive information. They may also catch arrangements between companies at different levels of the supply chain, such as a manufacturer setting the resale price at which its distributors must sell to end customers.

Aside from anti-competitive agreements, companies in a dominant position on a certain market must exercise particular caution, as any abuse of that position is prohibited. Notably, the concept of market dominance is very broad under German law and extends to situations where specific customers are dependent on their supplier (also known as 'relative dominance'). The risks posed by not complying with antitrust rules are real – the EC and the FCO both have a strong track record of enforcement against foreign and domestic companies, and fines can run into the hundreds of millions of dollars.

In some instances (ie bid-rigging), individuals may face criminal sanctions (including imprisonment) in Germany for violating antitrust rules. Further, the threat of damages actions by aggrieved customers or competitors should not be underestimated. While not as well established as in the U.S., private antitrust litigation in Germany is on the rise.

German antitrust legislation is undergoing reform and has recently been modified to become even more claimant friendly (eg introduction of provisions for pre-trial disclosure). Therefore, the trend towards increased private enforcement of antitrust damages is expected to continue. A rigorous antitrust compliance policy and training programme can help to minimise the risk of antitrust infringements, and companies doing business in Germany should consider putting such a programme in place, or extending and adapting any existing policy to its German operations.



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5.5. Foreign direct investment control

Germany is open to foreign direct investments. Acquisitions of domestic companies by foreigners may be reviewed, in particular, by the German Federal Ministry for Economic Affairs and Energy (*Bundeswirtschaftsministerium* – ***BMWi***) on the basis of the German Foreign Trade and Payment Act and on the basis of the German Foreign Trade and Payment Ordinance (*Außenwirtschaftsverordnung* – ***AWV***). These clearance procedures should be considered carefully at the early stages of each transaction as they imply significant risks with view to the timeline and the certainty to close a transaction as agreed between the parties.

– The acquisition of at least 25% of shares in a German company by an investor from outside the EU or the EFTA falls under the scope of the so called cross sector *examination*. BMWi is entitled to review acquisitions that they consider to endanger the security and order of the Federal Republic of Germany. These criteria are vague and broad. They include, for example, a number of business activities in the field of energy, water or telecommunication infrastructure. The acquirer is not obliged to notify the BMWi of the acquisition but the BMWi may initiate an in-depth review *ex officio* within a period of up to five years from signing. The acquirer may mitigate the corresponding risks by applying for a certificate of non-objection which is deemed to be granted if the BMWi does not initiate a review within two months after filing. The opening of an in-depth review procedure usually triggers an obligation to provide the BMWi with quite detailed information on the acquirer, the seller, their businesses and their market positions. Once the BMWi considers that this information is complete, they have to prohibit the transaction or to order ancillary conditions within a period of four months, otherwise the clearance is deemed to be granted. As the start of this four months period is depending on the considerations of the BMWi, whether or not the information is complete, it is difficult to predict how long a clearance process actually takes.

– An obligation to notify the BMWi of the acquisition of at least 25% of shares exists where an investor from outside the EU or from outside the EFTA targets a German company that is operating "critical infrastructure". This includes, in particular, a broad field of IT-related businesses. The acquirer is entitled to apply for a certificate of non-objections. If this is not (deemed to be) granted, the BMWi may initiate an in-depth review procedure pursuant to the aforementioned principles.

The so called *sector specific examination* may apply in cases where a non-German investor acquires at least 25% of shares in a German company that is active in the defence sector or dealing with technology which is certified by the German Federal Office for Information Security (*Bundesamt für Sicherheit in der Informationstechnik*) (eg encryption tools). Such acquisition needs to be notified and a clearance is required prior to closing. There are no statutory deadlines for the issuance of this clearance.

Asset deals may be of relevance under these regulations as well as any other attempts to structure a transaction, with the objective to circumvent the requirement to clear an acquisition. In its latest guideline, the BMWi emphasised that even financial transactions that may result in a transfer of shares (eg share pledges), may fall under scope of this regime whilst pure green field investments are typically out of scope.

In recent months, we observed that the BMWi tightened its approach and tends to initiate in-depth review procedures. At the same time, clearance procedures become more complex as, for example, more detailed questions raised by the BMWi are to be answered, documents are to be submitted in German including SPAs and their annexes or contractual commitments are to be negotiated with the BMWi in order to agree on the conditions of a clearance. Against that background, it is of greatest significance to consider the requirement of a foreign direct investment clearance beside further filings such as the merger control filing. Current discussions on the EU level may trigger the necessity to align foreign direct investment clearance procedures with other EU Member States. This will again make it more complex and time consuming to receive a clearance in Germany and in other countries.

5.6. Lobbying laws and restrictions

As they are not obliged to be political neutral, companies may donate to political parties. The approval of a company on political donations is at the reasonable discretion of the management board. However, it must: (i) have a certain connection to the business of the company; (ii) be appropriate with regard to the amount of the donation and the financial situation of the company; (iii) be announced within the company ie the amount, the addressee and purpose of the donation; and (iv) not be influenced by extraneous circumstances (*sachwidrige Erwägungen*).

According to the German Political Parties Act (*Parteiengesetz* – ***PartG***), political parties are entitled to accept donations. If the total amount of donations made to a political party in one calendar year (accounting year) exceeds EUR10,000, the donation must be recorded in the statement of accounts together with the names and the addresses of the donor. A political party is obliged to immediately notify donations in excess of EUR50,000 to the president of the German Bundestag, who will publish the respective donation.

There exists neither a specific "lobby law" nor a mandatory lobby register in Germany. Lobbying associations may opt for a voluntary registration in a "lobby register", whereas this list does not include professional lobbyists, lawyers, so called "think tanks", and NGO's.

Generally, lobbying is allowed as far as no violations of applicable law ie corruption and/or bribery are committed. Most of the German anti-bribery and corruption provisions are laid down in Sections 331-338 (bribery in public office), 299-302 (bribery in commercial business transactions) and 108b-108e (electoral bribery) of the German Criminal Code (*Strafgesetzbuch* – ***StGB***). The anti-bribing and corruption practices involving EU and other foreign public officials and judges are penalised by the European Union Anti-Corruption Act (*EU-Bestechungsgesetz* – ***EUBestG***) and the Act of Combating International Bribery (*Gesetz zur Bekämpfung internationaler Bestechung* – ***IntBestG***) respectively.

The law generally applies to offences committed: (i) in Germany; (ii) outside of Germany against a German; and (iii) outside of Germany by a German. The EUBestG extends the passive bribery offence to the public officials and judges of the EU and its member states. Generally, German anti-bribery and corruption law covers active bribery ie offering a bribe and passive bribery such as accepting a bribe. An exception to this rule is an offence involving non-EU public officials where only active bribery is prohibited. German anti-bribery and corruption provisions cover offences in both, public and private sector.

The penalties for individuals range from fines to imprisonment whereas the sanctions apply to each count of bribery. The maximum aggregate sentence is, however, ten years. The penalties according to the offence type are:

– bribery in public office: fine or imprisonment up to five years, in serious cases up to ten years;

– bribery in commercial business transactions: fine or imprisonment up to three years, in serious cases up to five years; and

– electoral bribery: fine or imprisonment up to five years.

Although companies cannot be subject to criminal liability under current law, they may be punished with fines up to EUR10m under the German Administrative Offence Act (*Gesetz über Ordnungswidrigkeiten* – ***OWiG***) for a corruptive act committed by their representatives or employees. In addition, such acts can lead to a confiscation or disgorgement of the economic advantage of the company gained through the respective bribe (eg gross profit or assets of equivalent value).

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6. Acquiring real estate

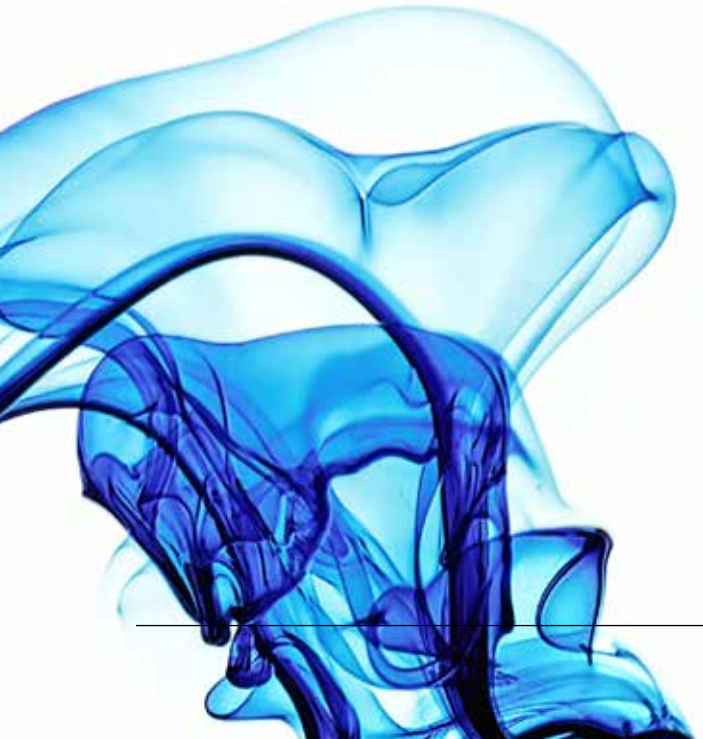
As a basic principle, the legal provisions applicable to business transactions in Germany involving the acquisition and transfer of title to real estate as well as the transfer of other rights concerning the estate pertaining to real estate and its use, such as security interests (*Sicherungsrechte*), a hereditary building right (*Erbbaurecht*), condominium ownership (*Wohnungseigentum*) or lease agreements, are, to a large extent, codified in the German Civil Code (*Bürgerliches Gesetzbuch* – ***BGB***) and, with regard to formal requirements, in the German Land Register Act (*Grundbuchordnung* – ***GBO***) as well as in the German Hereditary Building Rights Act (*Erbbaurechtsgesetz* – ***ErbbauRG***) and the German Condominium Rights Act (*Wohnungseigentumsgesetz* – ***WEG***).

6.1 Title to real estate – the German land register system

In Germany, each parcel of land (as well as condominium/separate ownership units (*Wohnungs-/Teileigentum*) and HBRs), the legal interests therein as well as encumbrances and obligations pertaining thereto, have to be registered with the land registers (*Grundbuch*) which are generally kept at the local courts. Based on applicable bona fide rules, the entries in the land register are deemed to correctly reflect the actual ownership and encumbrance situation.

Separate land register folios are kept for one or more land parcels and each folio is divided into four divisions:

- The "Inventory" section shows the relevant land parcels and the legal basis of ownership as well as certain beneficiary rights which the relevant property might have on adjacent parcels of land (rights of way etc.).
- "Division I" contains the name of the registered owner(s).
- "Division II" includes certain restrictions, encumbrances and charges (except mortgages and land charges which are registered under "Division III"), such as easements/servitudes (*Dienstbarkeiten*) and restraints of sale, which potentially limit a property owner's right to operate and/or dispose of the relevant property. That being said, however, most of such restrictions do not regularly have a material impact on ownership and rights of use as they relate to – *inter alia* – rights of way granted to third parties, obligations to tolerate pipes and sewer lines, etc.
- "Division III" lists the security interests encumbering a property, such as mortgages (*Hypotheken*) and land charges (*Grundschulden*) as well as their alterations and cancellations.



6.2 Transfer of title to real estate

The transfer of title to real estate (or comparable ownership interests, including HBRs and condominium units) in Germany requires a sale and purchase agreement as well as a conveyance agreement, both to be recorded by a German notary public. In order to finally accomplish the transfer of title to real estate, such change in ownerships has to be registered with the competent land register upon application of the current (selling) owner.

Registration of change in ownership may be secured by a priority notice of conveyance (*Vormerkung*) as a significant timeframe (weeks or even months) following the signing of the sale and purchase agreement. The conveyance agreement may pass before the change in ownerships is entered into the competent land register. A registration of such priority notice of conveyance is usually performed by the competent land register within days. Once the priority notice of conveyance is registered with the land register, the beneficiary of such notice will become the new owner of the real estate when the current owner files the relevant application for such registration with the land register, regardless of possible conveynaces to a third party in between.

6.3 Real estate transfer tax

6.3.1 Asset deals

Real estate transfer tax (***RETT***) is generally triggered on all direct sales (asset deals) of properties located in Germany. Each Federal State of Germany is free to introduce its own RETT rate with current rates ranging from 3.5% to 6.5% of the purchase value. It is worth noting that RETT is triggered already upon conclusion of a binding property sale and purchase agreement.

The German Real Estate Transfer Tax Act contains only few exemptions from RETT like transfers due to cases of succession (*Erbfälle*), transfers with a value of less than EUR2,500, transfers due to certain intra-group corporate reorganisations or transfers to or from partnerships etc. Therefore, in a usual asset deal scenario between third parties RETT cannot be avoided.

6.3.2 Share deals

If a German property is indirectly acquired by way of acquisition of a property holding company (share deal), RETT rules different to those for asset deals apply. In a nutshell, RETT is triggered in a share deal if the purchaser directly or indirectly acquires 95% or more of the shares in a property holding company (in the legal form of a partnership or corporation), or if 95% or more of the interests in a partnership are directly or indirectly transferred to new partners within a five year period.

Please note that the German legislator currently considers amending the RETT rules in order to tighten the conditions for RETT free share deals.

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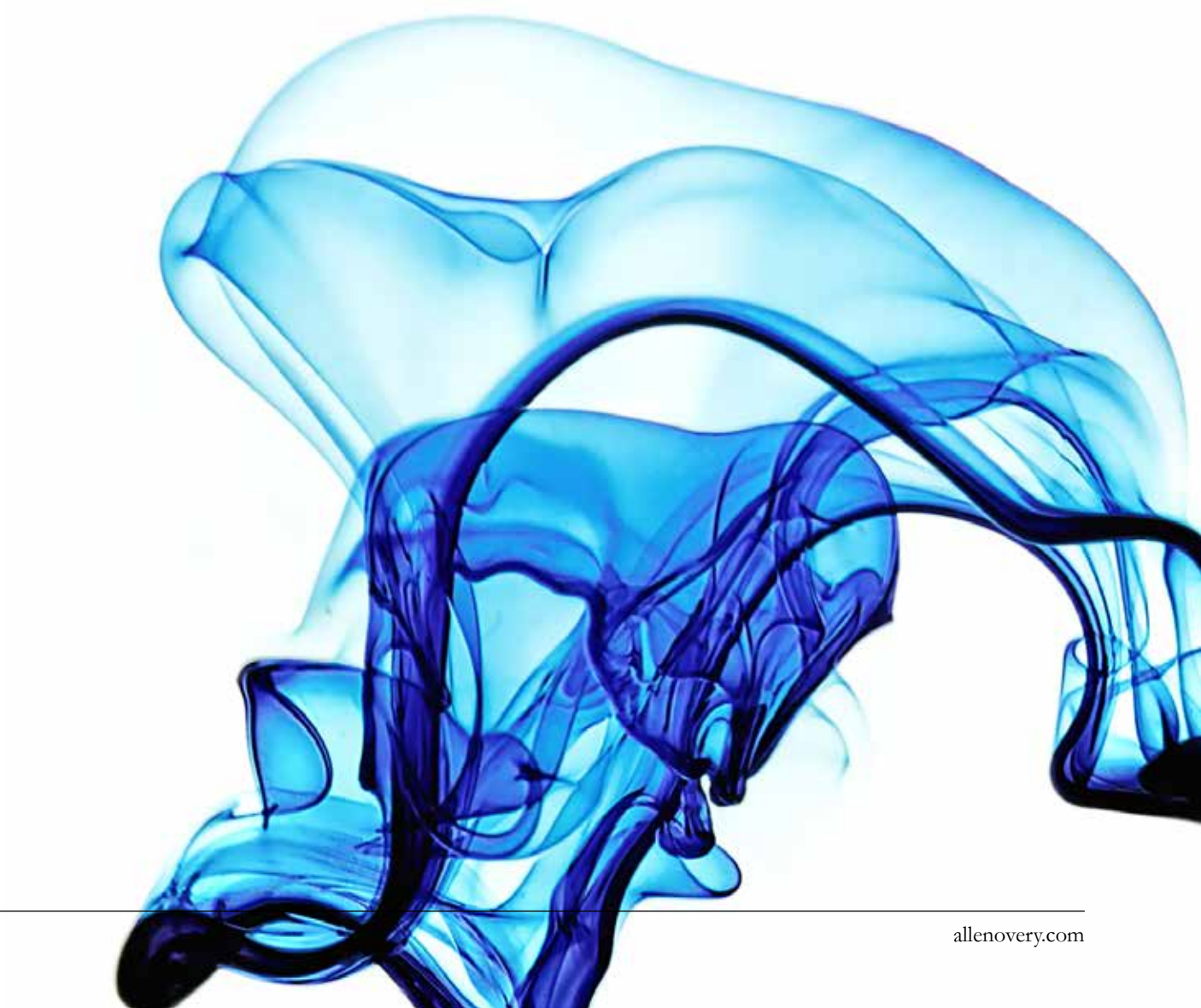
6.4 Public law and the acquisition of real estate

Business transactions often involve the acquisition of real estate. The acquisition of real estate is as a rule not subject to permit requirements. Nonetheless, permits are generally required for the erection of buildings, structural changes or changes of use of a building. The "transfer" of such permits is typically not an issue in a transaction (even in an asset deal), as they automatically "transfer" with the respective assets.

Due to Germany's long-lasting industrial tradition, soil and groundwater is often affected in industrial areas for historical reasons. Under German law, not only the polluter but also the owner and the tenant may be held liable for soil and groundwater contamination by the authorities. Thus, this is an important aspect to be taken into account in a transaction. We closely work together with the environmental advisers of our clients to adequately cover related risks in the transaction documentation.



7. Real estate finance in Germany

The real estate market in Germany is the largest in Europe. Likewise, the German real estate finance (***REF***) market is very mature with numerous participants and a tailored product for each type of investment and structure.

7.1 Products

The German REF market offers a huge variety of products tailored to serve any business need a real estate investor may have. Financing products offered include financings with several layers of debt by way of senior/mezzanine loan structures, acquisition loans for share and asset deals, mortgage backed securitisations (ie CMBS transactions), (secured or unsecured) notes issues, *Schuldschein* loans, development financings, restructuring loans, loans made available by German mortgage banks (*Pfandbriefbanken*) who refinance themselves via issue of German covered bonds (*Pfandbriefe*), bridge financings (quite often made available by investment banks with a view to be taken out by a long-term financing by a German mortgage bank), "loan-on-loan structures" in the context of financing loan sales transactions, refinancings of existing indebtedness or of equity (eg in case the initial acquisition of a property was funded out of equity) etc.

7.2 Assets and asset classes

Property rights (ie freehold, heritable building rights, partial ownership and condominium ownership) are eligible assets for German real estate financings.
Asset classes financed in Germany are very diverse and include retail, office, Do-It-Yourself-stores, logistics, shopping centres, residential units, hotels, nursing homes and hospitals, including, in the latter cases, sophisticated structures like OpCo/PropCo-structures (where a PropCo owns the property and the hotel-buildings on that premise and an OpCo is operating the relevant hotel) or structures involving FixturesCos for tax purposes (where a PropCo owns the property but a separate FixturesCo owns moveable business related assets or accessories (such as heavy-weight lifts, etc.)).

7.3 Market participants

On the lenders' side, investors may choose among a large variety of potential financiers, including traditional bank lenders (in particular, German mortgage banks which are dominant in the German REF market), international (investment) banks, insurance companies, debt funds, pension funds and other institutional lenders.
Accordingly, generally speaking, any sort of financing profile can be accommodated in the German REF market.

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7.4 Documentation standards

Other than in, for example, the UK market, the documentation standards used in the German REF market are rather diverse. The standards range from the LMA standard (ie the documentation standard developed by the London based Loan Market Association, for high-end, complex or large transactions or transactions targeting the European syndication markets), over German industry standard documentation (vdp – German mortgage bank association) (eg for domestic transactions) to short-form in-house documents (eg for smaller sized deals or for bilateral loans). The standard is typically agreed upfront between the lenders and the individual sponsor/investor.

7.5 Typical financing structure

Cash-flow based financings on a non-recourse basis used in the UK and U.S. markets are also available in the German REF market and today the predominant deal structure sought after by internationally investing sponsors. Key elements of such non-recourse structure are that: (i) the borrower is a single purpose vehicle (SPV) established or used solely for the purpose of the relevant transaction; (ii) the relevant lender has only recourse to the assets of and the shares in such SPV; and (iii) save for the granting of security over the shares in the borrower and subordination of its claims against the borrower, there is no further recourse by the respective lender to the sponsor/investor. As a result of such non-recourse structure, a lender will request security over all assets of the borrower. In addition, a lender typically requests that the borrower is ring-fenced against any liability/financial indebtedness other than under the relevant loan agreement with its bank. Since there is no standard certificate of title available in the German REF market, a special focus (and expense) will also be a thorough due diligence requested by the banks.

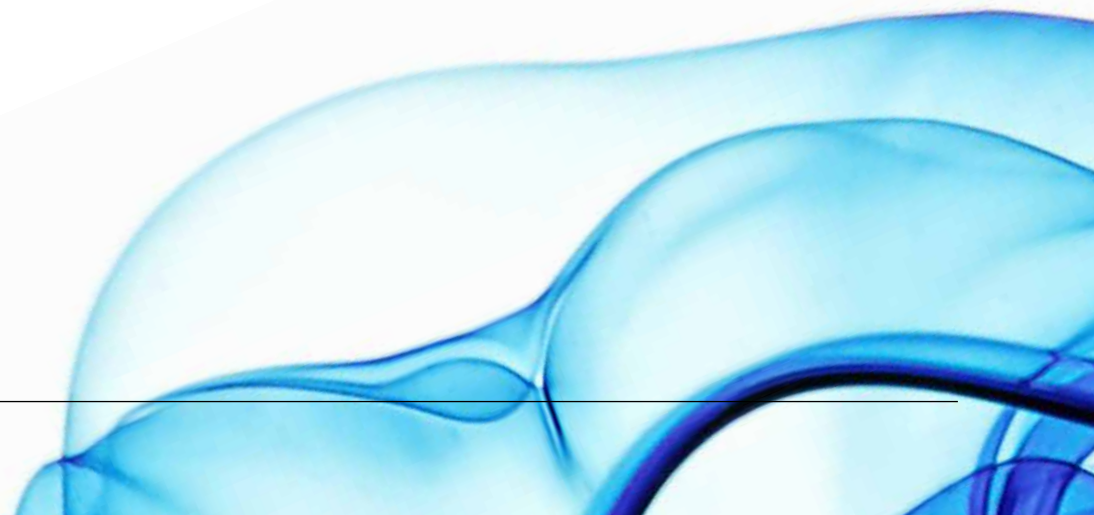
7.6 Sponsor focus for loan documentation

As typical for other jurisdictions, the loan documentation in the German market is based on an ideal structure from a bank's perspective and thus needs to be tailored and adjusted to the individual deal presented by the relevant sponsor/investor. A special focus of a sponsor/investor should be on the extensive set of provisions affecting its day-to-day business. Such provisions are representations (status, compliance with laws), waterfalls and account provisions (ability to operate account, blocking rights, priority of payments, cash trap/cash sweep, etc.), undertakings (negative pledge, financial indebtedness and disposal restrictions), information undertakings (compliance certificate and property reporting), property undertakings (letting restrictions, insurance obligations and maintenance obligations), financial covenants (LTV, DSCR or ICR) and events of default (payment default and insolvency). A thorough understanding of the individual asset as well as the sponsor's business model and operations is key.

7.7 Types of security in a German real estate financing transaction

A typical security package in a German real estate financing transaction includes:

- (Most importantly), security over the relevant real estate in the form of a land charge (*Grundschuld*) or a mortgage (*Hypothek*);
- Agreement on the security purpose in respect of the land charges or mortgages (linking the land charge/mortgage to the underlying secured loan);
- Security over all shares and interests in the obligors;
- Security over all bank accounts (if any) held or to be held in future by the obligor;
- In case of an OpCo/PropCo structure (eg in a hotel deal), Security over moveable assets of the OpCos; and
- Security in the form of a series of assignments in respect of rental income, insurances, intercompany receivables/claims, rights and claims under sales contracts, rights and claims under hedging agreements, rights and claims under the relevant acquisition document, rights and claims under franchising agreements (if any) and intellectual property rights (if any), etc.



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7.8 Structuring of security over real estate

Property security is typically granted in the form of a land charge (*Grundschuld*) which can be created as a certificated land charge (*Briefgrundschuld*) or as a non-certificated land charge (*Buchgrundschuld*). A land charge encumbers the relevant real estate together with any building erected on such plot of **land**, accessory, and lease resp. rent claims. However, a land charge can also be created over rights which are equivalent to real property (ie condominium or partial ownership and heritable building rights (akin to a UK leasehold)).

To come into existence, a land charge needs to be registered in the relevant land registers and, in the case of a certificated land charge, the land charge certificate needs to be delivered to the relevant bank. As the registration of a land charge is paramount for a financier, usually a long stop date is included in a financing documentation by which the land charge needs to be registered.

From an investor's perspective, attention needs to be paid to tailor the land charge to the relevant transaction so that such security is constituted in the most cost efficient manner but still achieves the security needed for the relevant financier. In particular, the structuring of the security should take into account the relevant exit strategy of the investor/financier.

In the case of a single property deal, a land charge is granted by way of a single land charge (*Einzelgrundschuld*). In a portfolio transaction, however, it may be more cost efficient to create a comprehensive land charge (*Gesamtgrundschuld*) encumbering several properties. A certificated land charge is more cost intensive than a non-certificated land charge. In a portfolio transaction, a certificated land charge may even result in delays of any single property sales and may thus not be desirable from an investor's perspective.

The land charge creation deed provides for: (i) a land charge in the agreed nominal amount (*Grundschuldnominalbetrag*) (which is enforceable up to such nominal amount); (ii) in rem interest of 15% to 18% p.a. (accruing on such nominal amount of land charge); and often (iii) a one-time ancillary payment of 8% to 10% of the nominal amount of such land charge. Both in rem interest and one-time ancillary payment come on top the enforceable amount under a land charge and are meant to cover any potential increase in value, potential enforcement costs and the interest accruing on the secured claim.

Land charges are usually made immediately enforceable (ie enforceable without the need to obtain a prior court judgement). This requires notarisation of the land charge creation deed and registration of the submission to immediate enforcement in the land register (*Unterwerfung unter die sofortige Zwangsvollstreckung*). In such case, the land charge creation deed constitutes an executory title under German procedural law. To avoid delays in the enforcement process, it is in practice quite typical that such submission to immediate enforcement is declared in an amount equal to 100% of the nominal amount of a land charge. Some cost savings may be achieved by limiting the percentage of such submission to immediate enforcement to 10% or 20% of the nominal amount.

8. Resolving disputes

Germany has a very efficient system of dispute resolution. In principle, disputes are resolved by the state courts. The parties to a dispute may, however, agree to refer their disputes to arbitral tribunals or to alternative dispute resolution mechanisms (such as mediation or expert determination proceedings). Dispute resolution by state courts or by arbitral tribunals is the predominant choice in business disputes.

8.1 State court proceedings

There are three main types of courts in Germany: civil courts, criminal courts and administrative courts. Typically, civil courts are the most relevant for litigating business disputes. The course of German litigation proceedings differs considerably from those in common law systems. In German litigation proceedings, the emphasis of the proceedings lies on written submissions. Throughout the proceedings and, in particular, in the oral hearing, the judge has a leading role, eg it is in the judge's discretion to decide whether to retain an expert or order any person to testify as a witness. There is no disclosure in general and each party has to offer and provide the evidence on which it wishes to rely.

Hearings before the court, including the pronouncement of judgements, are usually open to the public and are conducted in German. Recently, some civil courts have set up special divisions on commercial matters, using English as the language of part of the proceedings. The general rule concerning reimbursement of costs is that costs follow the event. The unsuccessful party will therefore regularly bear the court fees and the opponent's lawyer fees. Any reimbursement of legal fees will, however, only include statutory fees. Often, the amount of the statutory fees is considerably lower than the actual legal fees.

The German system of civil procedure allows in general for three levels of adjudication. The judgement of the court of first instance can in most cases be appealed (*Berufung*). The judgment of the court of appeal may be appealed again in certain circumstances but only on limited grounds. At present, the average duration of proceedings in civil law matters in the first and second instance amounts to nine to ten months respectively. However, these are only average figures. Besides, court proceedings can not only be concluded by a judgement but may also be ended by a settlement between the parties.

Once a judgement has become legally binding, the party seeking to enforce a judgement needs to apply for the respective enforcement measure. Typical measures of enforcement are seizure of movable assets, garnishment of monetary claims or enforcement against real estate by way of, *inter alia*, forced public auction.

Overall, the German litigation system is regarded as efficient, reliable and not overly expensive.

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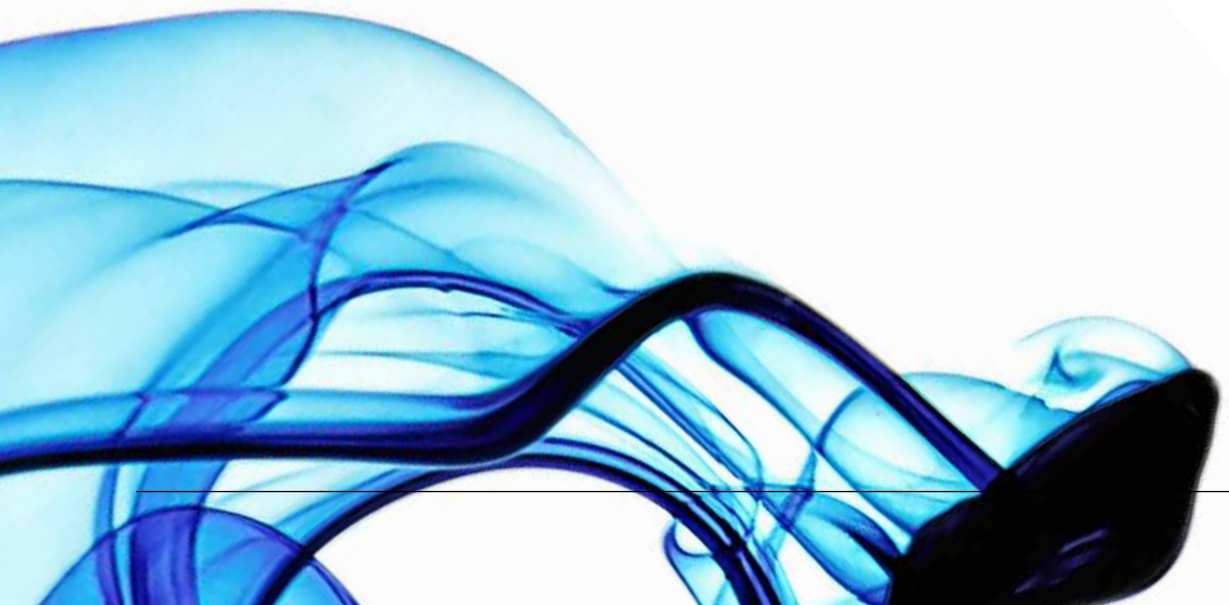
8.2 Arbitration proceedings

Arbitration has proven to be an attractive alternative dispute resolution mechanism in business disputes and the number of arbitration proceedings is constantly increasing. In some areas, such as mergers and acquisitions or contracts relating to the energy sector, arbitration is far more common than litigation before state courts. The legal framework for arbitration is extensively aligned with international standards and German arbitration law is, to a very large extent, governed by party autonomy.

The parties are free to determine the procedure themselves or by reference to a set of arbitration rules. Hence, parties may choose the rules of any of the international arbitration institutions such as, for example, the Rules of the International Chamber of Commerce (***ICC***). By far the most important German arbitration institution is the German Institution for Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.* – ***DIS***). The DIS has vast experience in handling all sorts of disputes, including of course international business disputes.

Arbitration proceedings are not open to the public and do not allow for an appeal. They may be conducted in any language on which the parties agree, and costs and duration will depend, in particular, on the arbitral institution and the complexity of the case. Arbitral awards cannot be immediately enforced but must be declared enforceable. In this regard, the German Code for Civil Procedure (*Zivilprozessordnung* – ***ZPO***) fully incorporates the provisions of the New York Convention of 1958. Once an award has been declared enforceable, the party seeking enforcement can choose the same enforcement measures which are available when enforcing a state court judgement (see above).

Overall, German courts are highly supportive of arbitration. They will decline to handle a matter if an arbitration agreement exists, and they have proven to be very cautious in making use of the few supervisory powers granted to them. As such, arbitration is fully recognised as an efficient and reliable instrument to resolve business disputes.



9. Managing employees

In Germany, there is no single statutory law governing the employment relationship. While the BGB defines the employment relationship, there is no consolidated employment law code. Minimum labour standards are laid down in separate acts on various employment-related matters. Other sources of German employment law are collective bargaining agreements (*Tarifverträge*), works agreements (*Betriebsvereinbarungen*) and case law. In the event of a conflict of provisions of statutory law, collective bargaining agreements and works agreements, as a general rule, the provision being most advantageous for the employees does apply.

Although most of the law in Germany is codified, court precedents and court practice play a significant role. The importance of case law is much higher in the employment law than in the rest of the German legal system, being predominantly based on the idea of codification. For example, statutory employment law does not cover labour disputes (such as strikes and lockouts).

9.1 Terms of employment

The individual employment contract entered into between the employer and an individual employee is the primary legal source with respect to the employment relationship. Aside from a few exceptions (such as fixed-term contracts), the employment contract does not need to be in writing. Moreover, there are no language requirements; however, since the official language in court is German, it is advisable to enter into a German language contract or at least a bi-lingual contract. In general, the parties are free to determine the provisions of their employment contract. However, in practice, to a great extent the individual employment contract merely supplements binding statutory law, collective bargaining agreements and works agreements.

9.2 Fixed-term/part-time work

Unlimited term contracts are the most common type of employment contract in Germany. It is common practice that the parties agree on a probationary period not exceeding six months. During this time, the contract may be terminated with two weeks' notice. It is also possible for the employer and the employee to enter into a written fixed-term contract in accordance with the Act on Part-Time and Fixed-Term Contracts (*Teilzeit- und Befristungsgesetz* – ***TzBfG***). The Act allows fixed-term contracts for a maximum duration of up to two years without giving a specific reason for the fixed-term (*sachgrundlose Befristung*). The contract may be extended three times provided the maximum duration of two years is not exceeded. Furthermore, a fixed-term contract must not be entered into if it was preceded by any kind of employment between the same parties and it must be concluded in writing. Part-time work is also governed by the TzBfG. Each full-time employee, including managerial employees, can request to work part-time, provided that they have been employed for more than six months and the company employs more than 15 staff. The employer has to accept this request unless it is not feasible in view of operational reasons. Other acceptable reasons for a refusal may be specified by collective bargaining agreements.

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9.3 Anti-discrimination

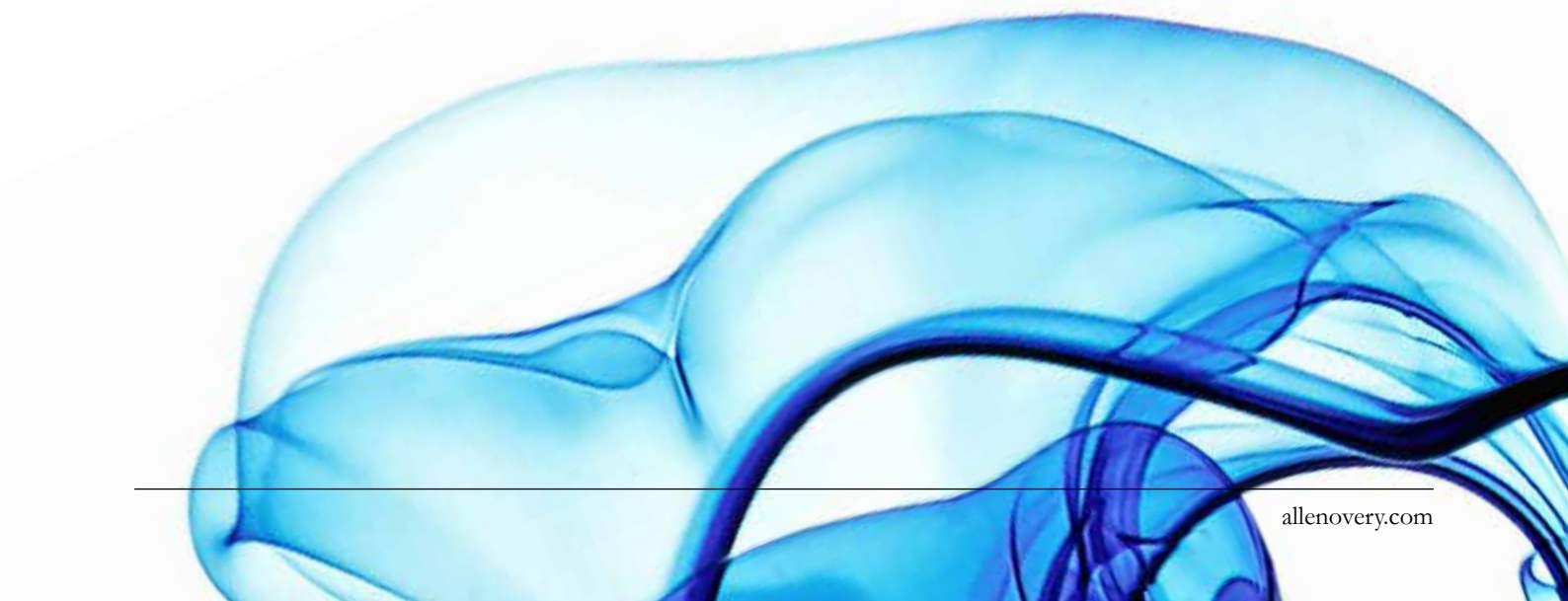
Following several EU-directives on discrimination law, Germany has implemented European discrimination legislation into its national law with the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz* – ***AGG***). The legislation protects employees against direct and indirect discrimination on the grounds of race, ethnic origin, sex, religion or belief, disability, age and sexual identity. It also provides protection against harassment and sexual harassment. According to the act, an employee or even an applicant who has been discriminated against or who has been harassed may claim compensation of pecuniary and non-pecuniary damages. In the event that the employer takes impropriate measures to prevent further harassment/sexual harassment, the employee may refuse performance.

The Pay Transparency Act (Entgelttransparenzgesetz – **EntgTranspG**) prohibits differences due to gender in pay for equal work and work of equal value. It mainly provides for information rights of employees regarding pay structures as well as reporting procedures in companies.

9.4 Remuneration

Since January 2015, a statutory minimum wage (as from 1 January 2017: EUR8.84 per working hour) applies; employment contracts and collective bargaining agreements must provide for no less than the minimum wage. Remuneration is agreed in the individual employment contract or determined by the applicable collective bargaining agreements. Statutory law in Germany does not require overtime payments. Companies may, on a voluntary basis, provide for bonus schemes such as supplemental or extra pay, profit sharing (*Tantieme*), commission, incentives or target bonus.

Due to mandatory law, staff having been employed for at least four weeks and being unable to work due to sickness are entitled to continued salary payment for a period of up to six weeks. The sick pay amounts to 100% of the remuneration which the employee would have earned had he not become sick. If the sickness exceeds the six weeks period, the employee will only receive sick pay on a lower level from his/her health insurance (*Krankengeld*).



9.5 Working time & holidays

Restrictions on working time are governed by the Working Time Act (*Arbeitszeitgesetz* – ***ArbZG***). The statutory general working time must not exceed 48 hours (Monday to Saturday) per week or eight hours per day (max.) but most German companies have a five-day week (Monday to Friday) with a weekly working of 40 hours. Working on Sundays or statutory holidays is, in general, prohibited. The ArbZG provides for additional binding rules as regards breaks/rest periods, night and shift work as well as deviations from the maximum working hours. If a works council (Betriebsrat) exists, the allocation of the daily working hours is subject to co-determination.

According to the Federal Holiday Act (*Bundesurlaubsgesetz* – ***BUrlG***), the statutory minimum holiday entitlement is 24 days per calendar year (Sundays and public holidays are not counted). Holiday entitlement may be extended by collective bargaining agreements or the individual employment contract. Employees are entitled to their first full annual holiday after they have worked six months and holidays may be transferred to the following year. However, transferred holidays have to be taken within the first three months of the following calendar year – otherwise, the transferred holidays lapse with an exception for long-term sick employees due to EU law.
The employee generally determines the time when the holiday is taken. In practice, the employee requests his holiday at a specific time and the employer can not deny his request except for a good reason.

9.6 Dismissal

Provided a company employs more than ten employees in a business (or more than five employees that have already been employed before 31 December 2003), employees who have been in the company for at least six months are protected against unfair dismissal under the Protection against Unfair Dismissal Act (*Kündigungsschutzgesetz* – ***KSchG***). Under the KSchG, a dismissal is unfair unless it is socially justified.

A termination notice, to be valid, must be in writing. Two types of termination notices exist in Germany: firstly, ordinary notice of termination where the employer must generally observe the notice periods as set out in the BGB or the applicable collective bargaining agreement. The minimum notice period is four weeks. Secondly, there is termination for good cause taking immediate effect (extraordinary dismissal), justified in the event of a material and repudiatory breach of contract by the employee such as gross misconduct or fraudulent behaviour. Moreover, if a works council exists, it must be heard before each termination, irrespective of its nature and reasons.

There is also special protection against dismissal for certain employees such as members of the works council, pregnant women, employees on parental leave and disabled employees. Such employment relationships can only be terminated for good cause. Specific rules apply to mass redundancies. In such cases, the competent labour authorities must be notified about the planned measures beforehand, as otherwise the termination will not be effective. As a rule, terminations cannot become effective earlier than one month after the notification is filed with the local employment agency.

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9.7 Employee representation

The works council is the main representative body for the employees' interests and the counterpart of the employer on business level. Duties and rights as regards the works council are stipulated under the Works Constitution Act (*Betriebsverfassungsgesetz* – ***BetrVG***). A works council can only be established by election in a business with at least five employees. Formation of a works council is not mandatory. The total number of members is determined by the number of employees regularly deployed at the business including temporary employees. Unlike trade unions, a works council must not organise a strike or take action in it.

The basic principle is one works council per business. If the company consists of more than one business, works councils may be set up in each business. The employer has to bear the costs of the works council and, among other things, has to provide the works council with offices, equipment and staff as necessary for the performance of the works council's duties. Legal entities with more than 100 employees must have an economic committee formed by the works council. The employer must discuss with the committee various business and commercial matters.

9.8 Rights of works councils

The works council has several rights of participation and co-determination on business level. It also has the right of co-determination in selected social, personnel and economic matters (eg working time, payment structures, recruitment and restructurings). These matters are regulated in works agreements concluded between the employer and the works council. There are gradual levels in the intensity of the right of participation starting with information and notification rights up to co-determination rights.

If attempts to reach an agreement in cases of co-determination rights fail, either party may appeal unilaterally to a conciliation board (*Einigungsstelle*) which then has to decide. If the employer and the works council do not agree on whether the works council has a co-determination right, the works council may petition the labour court to decide on the dispute. If the employer violates a co-determination right, the works council may file a suit with the labour court to declare the measure invalid.

9.9 Dealing with company pensions

In Germany, it is mandatory for employees to participate in the first pillar state social security system which provides for retirement, disability and surviving dependants' benefits. The statutory pension system is funded by equal contributions of the employer and the employee. In general, employees are entitled to retirement pensions at the age of 67 (gradually raised from 65 to 67 for birth cohorts from 1947 or later).

It is common for (larger) companies to provide for second pillar company pension schemes as an addition to the statutory pensions. Company pensions have a long tradition in Germany. However, given that the first pillar pensions were and still are substantial, company pensions are less important than in countries with less generous first pillar benefits. Company pension schemes can take various legal forms with differing implications as regards the scope and risks of liability, balance sheet effects and taxation. Company pension schemes have to be conducted via one of the following implementation forms (*Durchführungswege*): direct pension commitments (*Direktzusage*), direct insurances (*Direktversicherung*), pension funds (*Pensionsfonds*), pension insurance funds (*Pensionskasse*) and support funds (*Unterstützungskasse*). Companies are basically free in terms of the introduction and arrangement of pension schemes, including combinations of different systems. However, the mandatory Company Pensions Act (*Betriebsrentengesetz* – ***BetrAVG***) in favour of the beneficiaries lays down a large number of binding regulations on certain respects, particularly regarding the vesting of pension expectancies (unverfallbare Anwartschaften), lump-sum settlements, the transfer of pension schemes to a new employer, the protection of pension entitlements in the event of insolvency and the adjustment of annuities in payment (*laufende Leistungen*). Employers who operate pension schemes via direct commitments, pension funds, support funds or – under certain circumstances – direct insurances are obliged to pay contributions to the Pension Protection Fund (*Pensions-Sicherungs-Verein – PSVaG*) which in case of a company's insolvency assumes liability for vested pension expectancies and annuities in payment. Employers in principle have to review annuities in payment at regular intervals and decide if an adjustment is necessary, taking into account the interests of the retiree as well as the company's financial situation.

In general, establishing a company pension scheme is voluntary. However, employees are entitled to claim a pension commitment funded via salary conversion (*Entgeltumwandlung*). Apart from that, an obligation to establish a pension scheme can result from collective bargaining agreements. In particular, collective bargaining agreements can provide for an implementation of salary conversion schemes which apply automatically unless the employee exercises a right to opt-out.

Historically and still today, most employers manage their company pension schemes internally and therefore reflect the pension liability on their balance sheet. Under statute law, there is no funding requirement for these schemes and many company pension schemes are therefore unfunded. However, since the early 2000s more and more companies have started to fund their pension liabilities externally eg by transferring them into external implementation forms such as pension funds or by setting up contractual trust arrangements (CTA) which then allow for a netting of pension accruals and plan assets. Despite the externalisation of pension commitments, companies must be aware that in principle they remain liable for the fulfilment of such commitments insofar as the external pension provider falls short of fulfilling them (eg due to funding problems). The rule is that German law does not acknowledge true defined contribution schemes which are customary in other countries. As an exception to this rule, since 1 January 2018, the BetrAVG allows for true defined contribution schemes (*reine Beitragszusagen*) under which the employer's obligation is limited to the payment of contributions with no liability for the fulfilment of pension benefits ("pay and forget"). However, these schemes require respective regulations in collective bargaining agreements as a legal basis. Also, defined contribution schemes must be conducted via special pension providers with the involvement of the collective bargaining parties.

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9.10 Collective Bargaining Law

Apart from workplace representation, employees' interests are also advocated by trade unions. One of their most important responsibilities is to negotiate and conclude collective agreements, which specify minimum working conditions while overriding less advantageous terms of individual employment contracts. Collective agreements are governed by the Collective Agreements Act (*Tarifvertragsgesetz* – **TVG**) and frequently contain provisions governing compensation, work time, overtime, notice periods etc. They can also provide for a permanent status of specific groups such as older employees or a temporary ban on dismissals for operational reasons. On the employees' side, only trade unions can be parties to a collective agreement. On the employers' side, collective agreements can be concluded by employers' associations, individual employers or by employers' associations on behalf of single employers.

Collective agreements have to be concluded in writing and apply directly and with compulsory effect to employment relationships bound by the agreement. Basically, collective agreements are legally binding with "normative effect" only in respect of members to the trade union which concluded them, as well as of members of the respective employers' association or the employer, who concluded the agreement. However, it is quite usual to include so called reference clauses into contracts of employment in order to incorporate the collective agreement into any contracts. Nevertheless, the use of such clauses should be carefully considered, as such clauses may lead to a stronger commitment to collective agreements than mere membership in an employers' association.

Upon termination, the legal norms enshrined within a collective agreement remain in force until they are replaced by a new agreement. Also, employers withdrawing from the employers' association remain bound to all collective agreements which were valid at the time of the withdrawal.

9.11 Industrial action and rights of trade unions vis-à-vis companies and works councils

Joining an employers' association may be an attractive option to companies, as negotiations with the trade unions can be delegated to the association. More importantly, membership grants companies "industrial peace" for the duration of collective agreements concluded by the respective association. During industrial peace, the contracting parties have to refrain from industrial action – in particular strikes. Otherwise, they will be liable for any damages.

While the number of working days lost in Germany because of strikes is – compared to other European countries – considerably moderate, it has increased lately due to the strengthening of small profession-specific unions (*Spartengewerkschaften*). Most surprisingly, Germany lacks explicit legal prescriptions on the right to engage in industrial action. Instead, the law governing the right to industrial action has been shaped heavily by case law. Accordingly, a lawful strike has to be organised by a trade union and must be aimed at a change that can be achieved by collective bargaining agreements. By consequence, political strikes are illegal in Germany, just like strikes whose purpose is to criticize or influence the employer, eg in order to deter him from a business decision such as outsourcing etc. Besides, the strike itself must be governed by the principle of proportionality, which implies that it must be *ultima ratio* and emergency measures as well as conservation measures must be safeguarded.

Aside from collective bargaining, trade unions have numerous rights in companies in which they are represented, which requires at least one employee to be a member of the trade union. This being the case, the trade union has a controlling and supporting function in respect of the formation of works councils, their activities and compliance with the BetrVG. This implies the right to appeal against a works council's election, to file an application against the formation of a works council as well as to participate in meetings of the works council.

10. Data protection

In Germany, data protection will primarily be regulated by the EU General Data Protection Regulation (Regulation (EU) 2016/679 – ***GDPR***) and the new Federal Data Protection Act (*Bundesdatenschutzgesetz* – ***BDSG-new***), coming into effect as of 25 May 2018 and at the same time replacing the current BDSG. Apart from the general data protection laws, there are sector-specific regulations at both state and federal level that provide data protection requirements. Examples include the Telemedia Act (*Telemediengesetz* – ***TMG***), which regulates electronic information and communication services and the Telecommunications Act (*Telekommunikationsgesetz* – ***TKG***), which addresses the processing of personal data relating to subscribers and users of telecommunications services.

The GDPR and BDSG-new apply to any processing of personal data by a person or body (so called "controller" – *Verantwortlicher*). Processing personal data, however, shall be lawful only if the data subject has given consent or the processing can be justified by other valid basis such as performance of a contract, compliance with a legal obligation or legitimate interest of the controller. The controller is obliged to be able to demonstrate compliance with the rules set out in the GDPR and BDSG-new (accountability – *Rechenschaftspflicht*). Moreover, personal data must be collected for a specific purpose and, in general, cannot be used for other purposes (purpose limitation – *Zweckbindung*).

The GDPR and BDSG-new provide distinct rules for processing of special categories of personal data – for example, information on a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic and biometric data, health or sex life. Processing of such sensitive data is only permitted, in principle, if the data subject has given explicit consent to the processing of those personal data.

If consent is required, it must be given freely by a clear affirmative and unambiguous act. There must be no (economic) pressure on the data subject. This particularly applies in an employment context. Consent can be revoked at any time. The decision of the data subject to give consent must be informed. As a result, information about the processing, the purpose of processing, data categories and recipients must be provided in the consent declaration. Since the controller must be able to demonstrate that valid consent has been given, consent should be either obtained in writing or by electronic means (such as email or ticking a box when visiting an internet website), albeit oral statements, in general, are sufficient as well. However, the BDSG-new makes an exception for consent provided in an employment context where consent must be given in writing as a general rule. Consent must be clearly visible in general terms and conditions.

The controller must take technical and organisational measures to ensure a level of security appropriate to the risk of processing to prevent, *inter alia*, unauthorised or unlawful processing as well as accidental loss/destruction/damage to personal data. Moreover, a data protection impact assessment must be carried out prior to processing personal data where high risks to the rights and freedoms of data subjects are likely (eg in terms of profiling or processing a large scale of special categories of personal data), which may also include prior consultation with the competent supervisory authority. A data protection officer shall be appointed when certain thresholds are met.

Commissioned data processing (*Auftragsverarbeitung*), where a data processor processes data as instructed by and on behalf of the controller, is allowed under the GDPR and BDSG-new, but strict rules apply. For example, commissioned data processing must be made in writing (including electronic form), specifying *inter alia* the nature and purpose of the processing, the technical and organisational measures and any right of the processor to engage with subcontractors. Also, the controller must verify compliance with any technical and organisational measures undertaken by the processor before the data processing begins and regularly afterwards. The results must be documented. As a general rule, the responsibility for compliance with data protection provisions remains with both, controller and processor.

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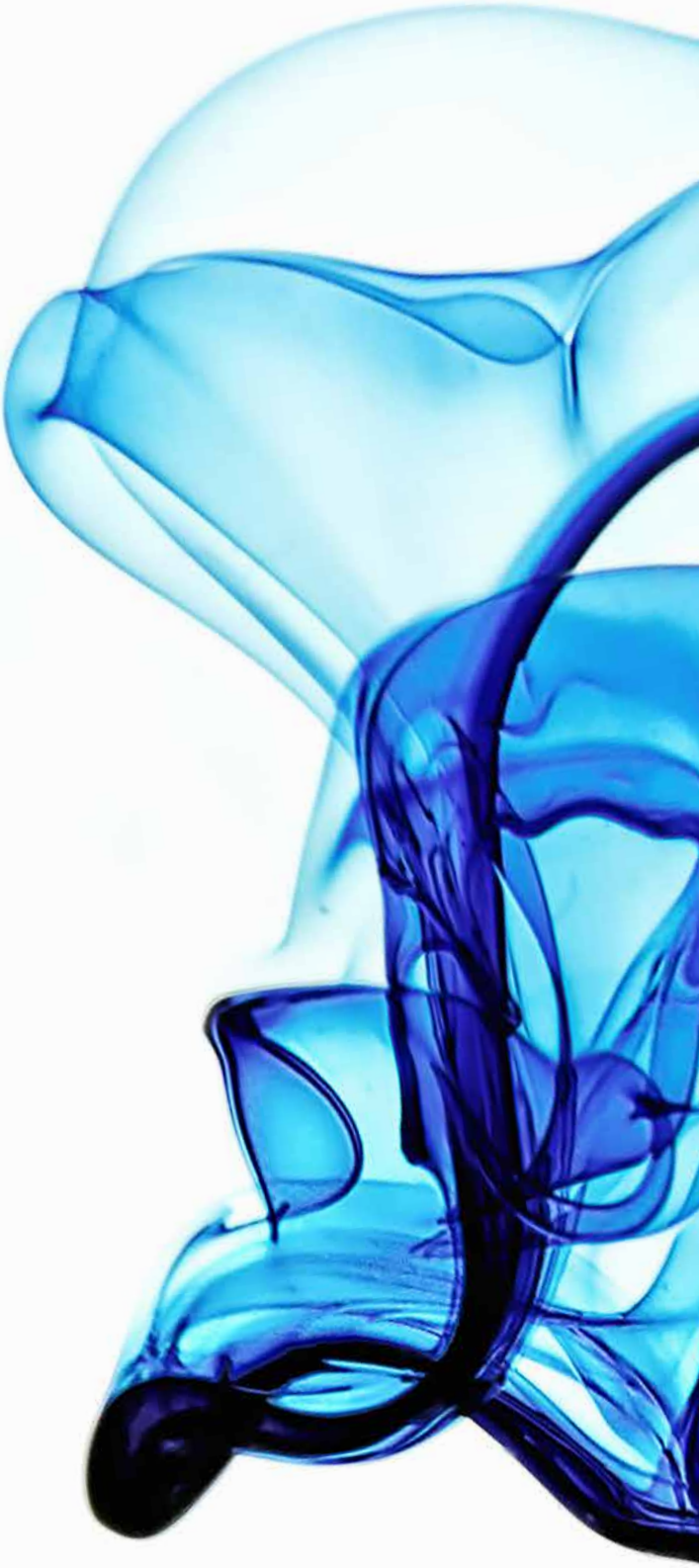
In terms of data transfer, the GDPR differentiates between transfer of personal data within the EU/EEA and outside the EU/EEA. Data transmission within the EU/EEA is – aside from the general requirements in terms of data processing – admissible without any further requirements. Transmission outside the EU/EEA is, in general, only permitted if an adequate level of data protection is ensured in the country of the recipient. There are, however, several transfer mechanisms to guarantee the adequacy such as binding corporate rules (BCRs), EU model clauses (*Standardvertragsklauseln*) and, in terms of data transfer to the U.S., the EU-U.S. Privacy Shield. There is no privileged data transfer between group companies (*Konzernprivileg*) – as each entity is regarded as a third party. However, data transfers between group companies for administrative purposes can constitute legitimate interest of the controller.

In case of data breach or cyber security threats, the controller must notify the competent supervisory authority and the data subject without undue delay (usually within 72 hours after having become aware of it). Any violation of the GDPR or BDSG-new can result in administrative fines of up to EUR20m or 4% of the total worldwide annual turnover of the group. The violation can also be considered a criminal offence in certain circumstances, and then is punishable with up to three years of imprisonment or a criminal fine.

In terms of e-Commerce, the ePrivacy Regulation will harmonise rules of the digital EU market keeping up with the fast pace at which IT-based services are evolving. The TMG, in particular, will undergo substantial changes once the currently discussed Regulation has passed the EU legislation procedure.



11. Intellectual property

Intellectual works such as know-how, inventions, designations or logos are often the foundation of a company, in particular for companies active in markets which are characterised by the continuous development of new products or technologies. In order to provide a competitive edge and to fully unfold their entire economic potential, such works must be protected and defended against competitors. But even in the absence of such intellectual works, the name of a company itself may be of significant economic value since it is the starting point for a company's goodwill and recognition.

For some IP rights (trademarks, designs and, expectedly from 2018 on, patents), there is an overarching intellectual property framework in Europe which allows for one sole registration to be valid throughout the entire territory of all EU member states. Apart from that framework, each country has its own national laws and rules governing the creation, recognition and (where applicable) registration of separate IP rights. Companies with European patents should anticipate the new unitary patent system by planning which patents they wish to enforce and for which patents an opt-out should be sought. An audit of patent portfolios should prove extremely useful in this respect. In Germany, the protection of intellectual property traditionally plays an important role. Most IP, such as trademarks, designs, patents, and utility models (but not copyright) can be registered at the German Patent and Trademark Office (*Deutsches Patent- und Markenamt* – ***DPMA***). Registration involves an application procedure including fees and does not impose any restriction on foreign, compared to domestic, investors. Additionally, quite extensive protection of product designs and business achievements is available under German law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb* – ***UWG***) which does not require registration. Copyright is not an Intellectual Property right in the stricter sense since it is considered to be closely linked to the author and personal to him, which i.a. leads to a German copyright not being subject to assignment, only licensing. Rights to software, for example, are classified as copyright.

On the procedural side, some features of the German systems are noteworthy as well. There is an established and highly efficient system of interlocutory (ie preliminary) injunctive relief, in many cases ex parte, ie without hearing of and often even without any prior notice to the defendant. Often, these court decisions are accepted to be binding by the parties which leads to even quicker yet final relief for IP owners, eg in case of IP infringement. Even in an ordinary (ie full trial) court proceeding, decisions can be expected rather quickly with quite limited litigation costs compared to other jurisdictions. Also, examination procedures are available by way of summary proceedings for securing evidence (*Besichtigungsverfahren*). In patent infringement proceedings, no invalidity counterclaim is available to the defendant – he rather needs to instigate separate proceedings before the Federal Patent Court (*Bundespatentgericht*), which strengthens the patent owner's position as a plaintiff in infringement proceedings. Overall, an efficient system is in place which makes Germany a favourable place for litigation.

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12. Taxes

For companies seeking to do business in Germany, tax is a factor which needs to be taken into consideration when establishing a presence there. In the section below, we have briefly highlighted certain aspects of German tax law which we believe a potential foreign investor in Germany should bear in mind when deciding on its investment. As a general rule of (not only) German tax law, please note that it is of great importance to structure an investment prior to its implementation since past (tax) mistakes cannot be retroactively corrected.

12.1. Income Tax

In Germany, there are three different types of income taxes: (i) income tax (*Einkommensteuer*), which is imposed on individuals; (ii) corporate income tax (*Körperschaftsteuer*), which is imposed on corporations; and (iii) trade tax (*Gewerbesteuer*), which is imposed on both individuals and corporations conducting (or deemed to conducting) a trade or a business. Since the aim of this brochure is to set out certain aspects of German tax law which are important for corporate investors, we will leave aside German income tax and focus on local corporate income and trade tax.

A corporation (*Kapitalgesellschaft*) which has its principal place of management (*Ort der Geschäftsleitung*) or its registered seat (*Sitz*) in Germany is generally subject to German corporate income tax at a uniform rate of 15.825% (including the solidarity surcharge (*Solidaritätszuschlag*)) on its worldwide income; this is regardless of whether the corporation is established under German or foreign law. A corporation that has neither its principal place of management nor its registered seat in Germany is, broadly speaking, subject to local corporate income tax only with its German source income.

Contrary to corporations, please note that partnerships (*Personengesellschaften*) themselves are not subject to German corporate income tax. Since partnerships are treated as tax transparent for German corporate income tax purposes, rather their business profits are allocated to and taxed at the level of the respective partners at the regular German corporate income tax rate. In this context, it should be noted that the interest in a German partnership which carries on a trade or business (*gewerblich tätige Personengesellschaft*) typically qualifies as a German permanent establishment (*Betriebsstätte*) of the relevant partners. This means that foreign corporate investors holding an interest in such partnership are usually subject to German corporate income tax on their profits derived from the partnership.

In terms of German trade tax, a corporation or a partnership which maintains a German permanent establishment (eg a German principal place of management or an office in Germany) is generally subject to German trade tax with its profits allocable to such permanent establishment. The applicable German trade tax rate depends on the German local municipality where the permanent establishment is located and ranges from 7% to 17.5%. However, subject to proper structuring, it may be possible for a foreign investor to invest in Germany through a German or foreign partnership to avoid German trade tax.

12.2 Interest deductibility

A crucial point for most foreign investors is the question of whether interest expenses under a loan used to finance the German investment are deductible for German corporate income and trade tax purposes. Under the so-called interest barrier rule (*Zinsschranke*), the net interest expenses are generally only deductible up to an amount of 30% of the taxable EBITDA. However, there are exceptions to this rule. The interest ceiling rule does not apply if the *de minimis* rule, the non-group member exception or the consolidated group escape clause applies.

The *de minimis* rule, again broadly speaking, applies if the annual net interest expenses are below EUR3m.
The other exceptions are rather complex and difficult to achieve in practice. However, subject to proper structuring, it is generally possible to benefit at least from the *de minimis* rule to the extent that interest expenses are deductible for German corporate income tax purposes, however, 25% of such interest expenses are generally added-back for German trade tax purposes.

12.3 Group taxation

German corporations are treated as separate entities for both German corporate income and trade tax purposes. However, subject to certain strict requirements under German tax law, it is permitted to establish a tax group for corporate income and trade tax purposes between these entities. By doing so, the profits and losses of the tax group members can be pooled at the level of the group head (such group head does not necessarily have to be a corporation). This is typically done to set-off interest expenses incurred at the level of the group head (eg resulting from the acquisition costs of the German target company/asset) against the profits of its subsidiaries.

12.4 Reorganisation tax rules

German reorganisation tax law offers a variety of possibilities to reorganise entities in a tax-neutral way. As it is the case with the group taxation rules, German as well as foreign investors typically use the local tax reorganisation rules to consolidate their German investments (eg a profit making subsidiary is merged up-stream into its German parent company to ensure that the interest expenses at the level of the latter can be set-off against the former subsidiary's profits). However, this requires proper structuring and implementation.

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12.5 Repatriation of profits

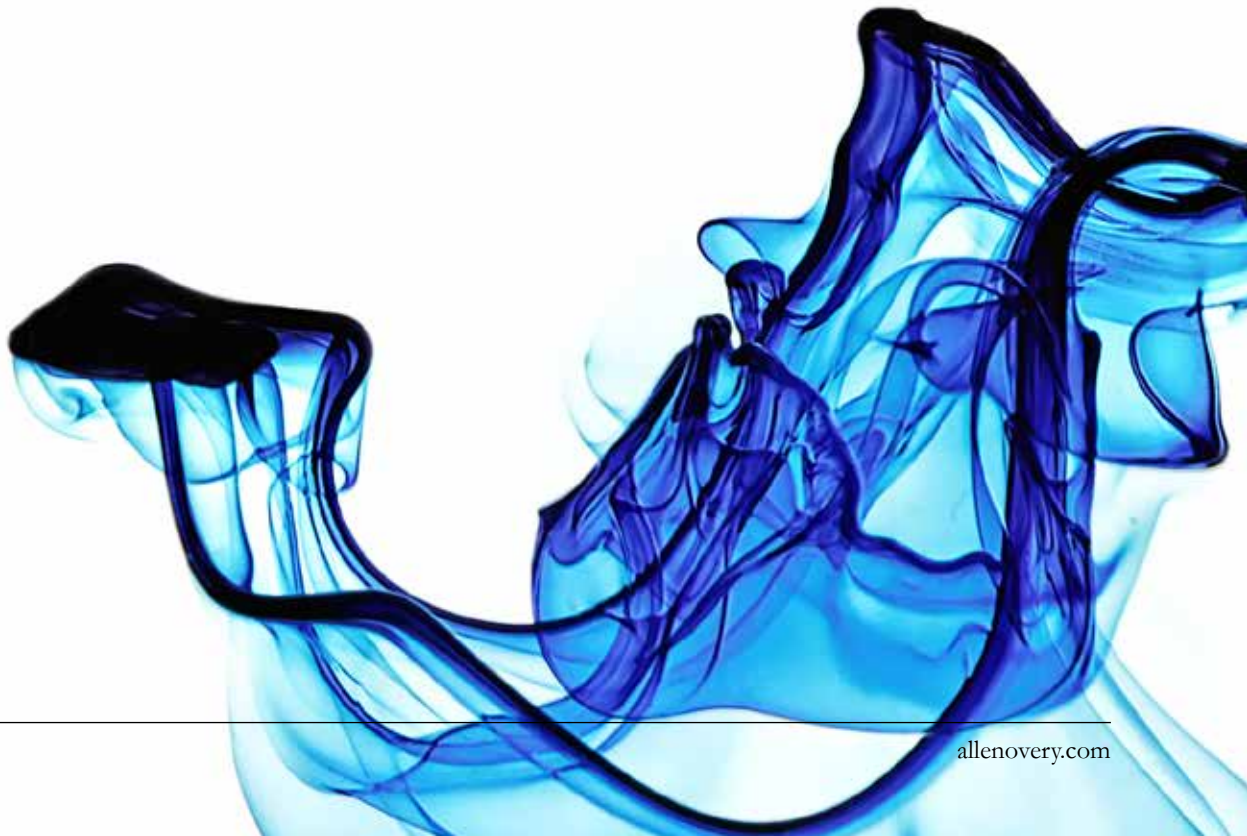
As set out above, a foreign investor's tax position in Germany can be significantly improved by properly structuring its investment. However, German tax law provides for specific as well as general anti-abuse rules. These need to be taken into account when structuring a German investment.

Please note that there is a general trend to tighten anti-abuse rules as a result of national and international measures targeted at base erosion and profit shifting structures. This also means that an investment structure which has proved itself as efficient in the past could be considered as abusive by the German tax authorities and, thus, be scrutinised in the future.

12.6 Value added tax

The German rules on value added tax (*Umsatzsteuer*) follow the general EU system of value added tax. Assets transferred on an acquisition are principally subject to German value added tax at a rate of 19%. Such valued added tax is generally recoverable by the acquirer if the acquirer qualifies as a taxable person for German valued added tax (*Unternehmer*).

The sale of shares in a corporation or the interest in a German partnership is exempt from German valued added tax unless the seller waives the exemption.



13. Etiquette and bargaining tips

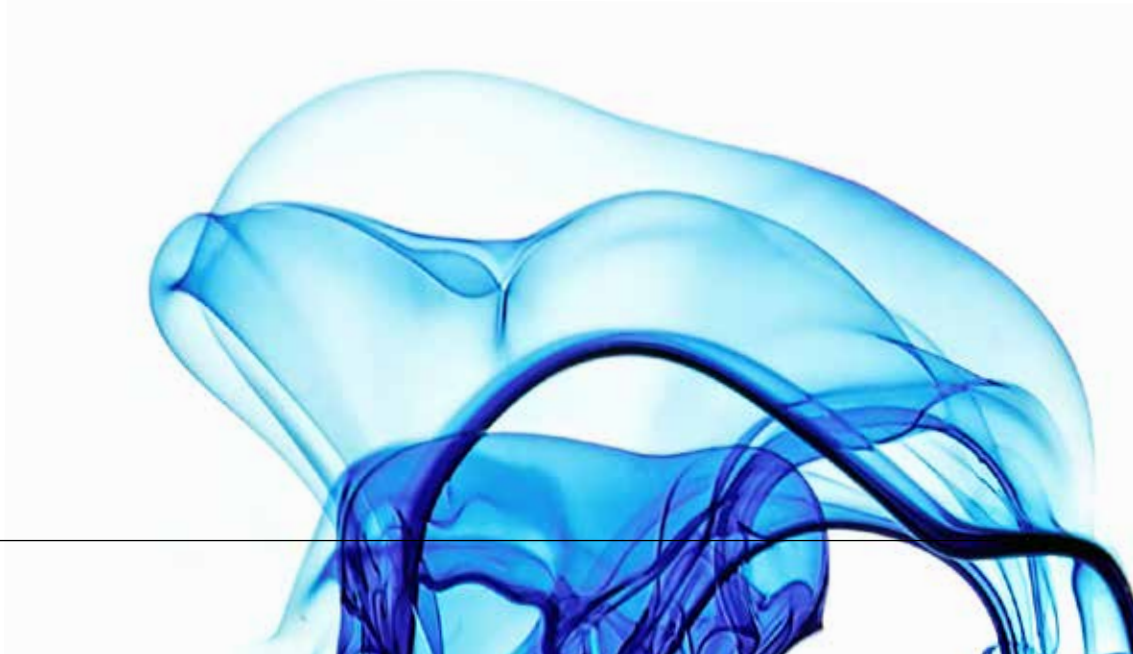
The legacy of their painful history has made the Germans a somewhat cautious people. One result of this need for security is a certain reserve in relationships. Clearly, Germans are not as gushing or forthcoming as citizens of many other nationalities. But it's really more a reflection of their ambition to be cautious before proceeding further in relationships. Once you've actually become friends with Germans, you'll discover they can be very loyal indeed.

13.1 Social and business etiquette

The basic German business structure is highly hierarchical with strongly defined roles. Responsibility within a firm is clearly defined: so much so that, from top to bottom, you'll often encounter workers who choose to close themselves off into the roles designated to them. This is often literally true. Just walk along the corridors of most German office buildings – you'll be struck by the fact that all or almost all the doors are closed. The Germans, in general, are rather averse to the "open-office"-principle that has become popular in North America and some other societies. Hence, a slow change can be notified.

The German culture is one of formality. There is a distinction between the formal 'you' and the informal 'you'. People who have been neighbours or work colleagues for many years may still refer to each other as the German equivalent of Mr and Mrs rather than use first name terms.

The proper term for German "teamwork" is probably "consensus-seeking". While many Germans have a strong sense of individualism, this is usually coupled with a keen sense of responsibility for "the good of the community or group". Many business decisions, for example, are evaluated not only for their financial benefits to the company, but also for those of its employees. The structure of much German business decision-making requires consensual input from both employers and employees which is another factor that can render decision-making comparatively slow.



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13.2 Business meeting etiquette and bargaining tips

1. **DON'T be late**: Being late in Germany is a cardinal sin. Turning up even five or ten minutes after the arranged time – especially for a first meeting – is considered personally insulting and can create a disastrous first impression. Minimise reputation damage by calling ahead with a watertight excuse if you're going to be held up.
2. **DO use titles and surnames**: German workers tend to stick to roles rigidly and rarely step out of strict office hierarchies. Stay in line and always address colleagues and business associates using their title and surname, unless or until they invite you to use first names. If you find yourself hosting, introduce your highest ranking guest to everyone else taking care to use full names and job positions.
3. **DO shake hands if in doubt**: As well as shaking hands in greeting, Germans also shake hands with everyone in a room before and after a business meeting or conference. The German handshake is firm and brief, said to convey confidence and reliability. A weak handshake will suggest you are unsure of your abilities.
4. **DO keep distance**: Germans don't tend to be the touchy-feely types. Observe the personal space of others and avoid patting shoulders, arms or generally any physical contact beyond that all-important handshake.
5. **DO say what you mean**: In negotiations, Germans tend to be direct and frank about what they want and they will expect you to do the same. If you are pitching a project, remember making a decision can be a long process, so don't bother with the hard sell, just present all the facts as thoroughly as you can. Likewise, if Germans are presenting you with a proposal, stock up on coffee and be prepared to be shown a barrage of figures, graphs, tables and pie charts.

Exhibit 5.1 – *Overview on the most practically relevant legal corporate forms*

	Limited Liability Company (*Gesellschaft mit beschränkter Haftung – **GmbH***)	**Stock Corporation** (*Aktiengesellschaft – **AG***)	**Limited Partnership** (*Kommanditgesellschaft – **KG***)
Legal basis	Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung – **GmbHG***)	Stock Corporation Act (*Aktiengesetz – **AG***)	German Commercial Code (*Handelsgesetzbuch – **HGB***)
Definition; legal personality	The GmbH is a corporation (*Kapitalgesellschaft*) with legal personality. This means that the GmbH itself is owner of assets and liabilities and holder of rights and obligations; it may acquire ownership of and other rights in real property, and may sue and be sued in court. Legal personality is acquired as of the day the GmbH is registered in the commercial register (*Handelsregister*). The shareholders' liability is, in principle, limited to the company's share capital. Where (legal) acts are performed in the company's name before the registration, the persons acting shall be personally and severally liable.	The AG is a corporation (*Kapitalgesellschaft*) with legal personality. This means that the AG itself is owner of assets and liabilities and holder of rights and obligations; it may acquire ownership of and other rights in real property, and may sue and be sued in court. Legal personality is acquired as of the day the AG is registered in the commercial register (*Handelsregister*). The shareholders' liability is, in principal, limited to the company's share capital. If one or more persons act on behalf of the company prior to registration, they shall be personally and jointly liable (*gesamtschuldnerisch*).	The KG is a partnership (*Personengesellschaft*) with legal personality. This means that the KG itself is owner of assets and liabilities (the provisions of the German Civil Code (*Bürgerliches Gesetzbuch – **BGB***) upon total hand ability (*Gesamthandsvermögen*) are applicable) and holder of rights and obligations, and may sue and be sued in court. It is required that, apart from the general partner (*Komplementär*) who is personally liable for the partnership's obligations, there is at least one limited partner (*Kommanditist*) whose liability is limited to the amount of a specific capital contribution (*Vermögenseinlage*). Legal personality is acquired, in principle, as of the day the partnership commences business, but in any event as of the day the partnership is registered in the commercial register (*Handelsregister*).
Purpose	Any legally permissible purpose.	Any legally permissible purpose.	The partnership shall be formed for the purpose of carrying on a business (*Gewerbe*) or managing only its own assets (*eigene Vermögensverwaltung*).
Share capital	The share capital (*Stammkapital*) of the GmbH shall be at least EUR25,000.	The share capital (*Stammkapital*) of the AG shall be at least EUR50,000.	There is no capital requirement since the general partner (*Komplementär*) is personally and fully liable for obligations of the KG.
Founders	The GmbH shall have at least one or more shareholders ie the formation of a one-man-GmbH is possible. These can be natural persons or legal entities, irrespective of their nationality. There is no maximum number of shareholders.	The AG shall have at least one or more shareholders ie the formation of a one-man-AG is possible. These can be natural persons or legal entities, irrespective of their nationality. There is no maximum number of shareholders.	A partnership shall have at least two founding members, one limited partner (*Kommanditist*) and one general partner (*Komplementär*). Founders can be natural persons or legal entities, irrespective of their nationality.

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	Limited Liability Company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)	**Stock Corporation** (*Aktiengesellschaft* – ***AG***)	**Limited Partnership** (*Kommanditgesellschaft* – ***KG***)
Incorporation	A GmbH may only be established by a notarised deed of incorporation (*Gründungsurkunde*). The (first) articles of association (*Satzung*) are generally attached to this deed of incorporation. Moreover, the entire formation of the GmbH requires the registration in the commercial register (*Handelsregister*). The respective application for registration may only be made after one quarter of the nominal value of each share has been duly paid in and is at the free disposal of the management board, whereas contributions in kind shall be made in full before registration. The total amount of contributions made, including contributions in kind, has to reach half of the minimum share capital ie EUR12,500.	An AG may only be established by a notarised deed of incorporation (*Gründungsurkunde*) in which the (first) articles of association (*Satzung*) are established. Moreover, the entire formation of the AG requires the registration in the commercial register (*Handelsregister*). The respective application for registration may only be made after the amount called on each share has been duly paid in and is at the free disposal of the management board. In case of cash contributions, the amount called and deposited shall comprise at least one quarter of the lowest issue amount and, if shares are issued for a higher amount, also the surplus amount. Contributions in kind shall be made in full before registration. In addition and regardless of whether it is a contribution in cash or in kind, the founders have to prepare a founding report (*Gründungsbericht*) on the course of founding. The founding report has to be examined by the members of the management and the supervisory board, before the results have to be summarised in an audit report (*Prüfungsbericht*). In particular, the audit report shall contain information on the acquisition of shares, on the capital contributions and on the determination thereof in accordance with the provisions of the AktG.	A KG may be established by conclusion of the articles of association (*Gesellschaftsvertrag*). A notarisation is not required. However, the KG has to be registered in the commercial register (*Handelsregister*), so that, the limitation of the limited partners' liability (*Kommanditistenhaftung*) becomes effective.

	Limited Liability Company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)	**Stock Corporation** (*Aktiengesellschaft* – ***AG***)	**Limited Partnership** (*Kommanditgesellschaft* – ***KG***)
Articles of association	The articles of association shall contain at least the following information: – corporate name (*Firma*) and registered office of the company; – purpose of the company; – amount of the share capital (*Stammkapital*); – number and nominal values of the shares to which each shareholder subscribes against payment of the capital contribution to the share capital (*Stammeinlage*); and – takeover of the founding expenses (*Gründungsaufwand*) to the detriment of the company. The nominal value of each share shall be a full euro amount. The amount of the nominal values of the individual shares may be variously determined, however, the sum total of the nominal values of all shares shall equal the amount of the share capital (*Stammkapital*). Beyond that, the shareholders may stipulate further provisions in the articles of association, such as regarding: – management (eg appointment and number of managing directors (*Geschäftsführer*)) and representation of the GmbH; – establishment of a supervisory board (*Aufsichtsrat*) or an advisory board (Beirat); – shareholders' meetings (*Gesellschafterversammlungen*) and their resolutions; and – the transfer of shares being subject to the company's consent (*Vinkulierung*). Since the articles of association are publicly available, it is possible to regulate only the essential legal requirements within the articles and beyond that to conclude a (non-public) shareholders' agreement (*Gesellschaftervereinbarung*), in which the GmbH's relations are further specified in detail.	The articles of association shall contain at least the following information: – corporate name (*Firma*) and registered office of the company; – purpose of the company; in particular, in the case of enterprises engaged in industry and trade, the articles shall specify the kind of produced and traded products and goods; – amount of the share capital (*Stammkapital*); – segmentation of the share capital either in par-value shares (*Nennbetragsaktien*) or in non-par shares (*Stückaktien*); the par value of par-value shares and the number of shares of each par value; the number of non-par shares and, if more than one class of shares exists, the classes of shares and the number of shares in each class; – whether shares are to be issued in bearer (*Inhaberaktien*) or registered form (*Namensaktien*); and – number of members of the management board or the rules for determining such number. Apart from common shares (*Stammaktien*), an AG may also issue preferred shares (*Vorzugsaktien*), which do not grant the shareholder any voting rights, but the right to a preferred and usually higher dividend. The articles of association shall specify if and how many preferred shares shall be issued. The articles of association may stipulate that the transfer of shares is subject to the company's consent (*Vinkulierung*). Beyond that, the content of the articles of association cannot be freely decided by the shareholders. The articles of association may deviate from the regulations of the AktG only if it expressly permits such deviation. Moreover, due to the principle of statutory severity (*Grundsatz der Satzungsstrenge*), supplementary provisions in the articles of association may only be made, if and to the extent the provisions of the AktG are not conclusive.	By the partnership agreement, the partners undertake to promote the achievement of a common purpose in the manner stipulated by the partnership agreement. The partnership agreement shall contain at least the following information: – business name (*Firma*) and registered office of the partnership; – names of all partners and classification as liable or limited partner; – amount of the limited partners' capital contribution (*Vermögenseinlage*); and – purpose of the partnership. Apart from that, the content of the partnership agreement may be freely decided by the partners, such as the scope of the general partners' authority to represent and manage the partnership, the establishment of an advisory board (*Beirat*), etc.

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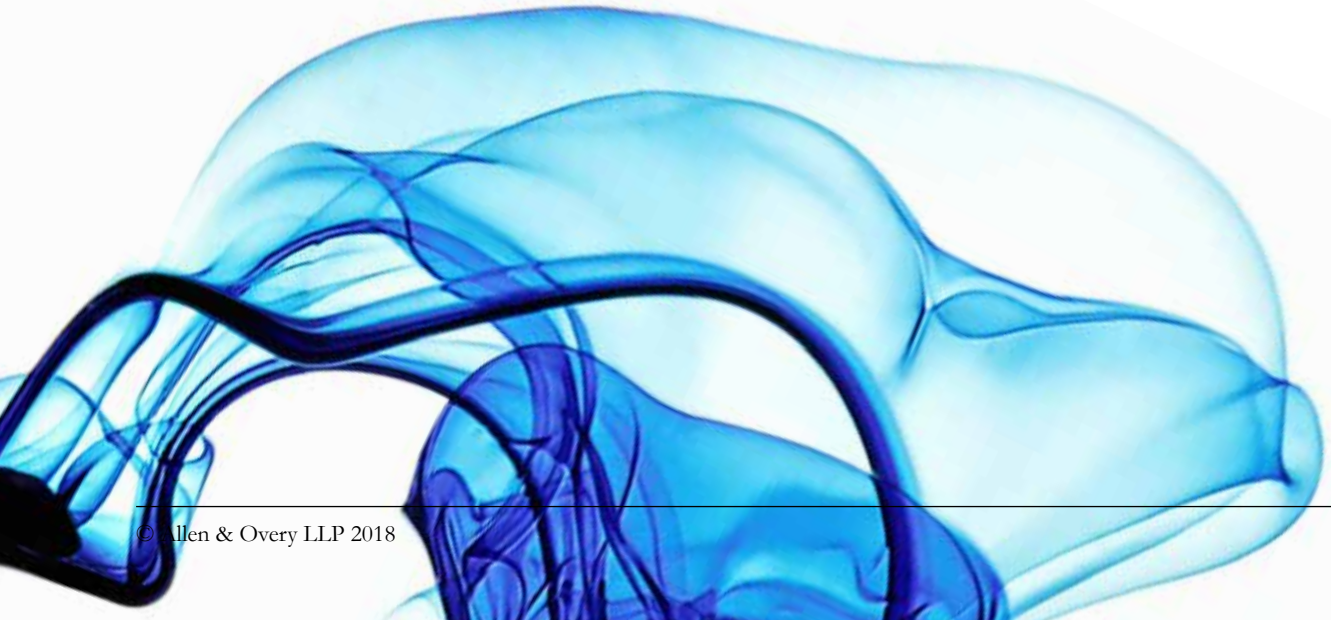
	Limited Liability Company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)	**Stock Corporation** (*Aktiengesellschaft* – ***AG***)	**Limited Partnership** (*Kommanditgesellschaft* – ***KG***)
Company's name	The corporate name (*Firma*) is the name of the GmbH under which it is registered in the commercial register (*Handelsregister*) and appears in business transactions. The name is freely selectable but may not be misleading and shall differentiate the GmbH from other company forms.	The corporate name (*Firma*) is the name of the AG under which it is registered in the commercial register and appears in business transactions. The name is freely selectable but may not be misleading and shall differentiate the AG from other company forms.	The business name (*Firma*) is the name of the partnership under which it is registered in the commercial register and appears in business transactions. The name is freely selectable but may not be misleading and shall differentiate the KG from other company forms. If the general partner (*Komplementär*) is a legal entity (eg a GmbH), this has to be clarified in the business name.
Registered office	The company's registered office shall be the place in Germany as specified in the articles of association. This location can differ from the location of the company's operational facilities, the company's management, and the company's administration. In particular, the seat of management or administration (*Verwaltungssitz*) of a GmbH can be located outside of Germany.	The company's registered office shall be the place in Germany as specified in the articles of association. This location can differ from the location of the company's operational facilities, the company's management, and the company's administration. In particular, the seat of management or administration (*Verwaltungssitz*) of an AG can be located outside of Germany.	The domestic business address shall be located in Germany. Unlike the GmbH and the AG, this location shall not differ from the location of the company's operational facilities, the company's management, and the company's administration (*Verwaltungssitz*).
Shareholders	The shareholders are entitled to co-administration rights (*inter alia* the voting right in the shareholders' meeting or the right to request the convenience of a shareholders' meeting) and property rights (*inter alia* the right to claim profit participation). Generally, there is no shareholder liability except in cases of violation of the principle of capital preservation (*Grundsatz der Kapitalerhaltung*) and destruction of the economic basis of the GmbH (*Existenzvernichtung*). The limitation of the shareholders' liability will only become effective upon registration in the commercial register (*Handelsregister*). Insofar as the company's liabilities result in a difference between the share capital and the value of the company's assets at the time of its registration in the commercial register, the shareholders are liable to the GmbH pro rata for compensation (*Verlustdeckungshaftung*).	The shareholders are entitled to co-administration rights (*inter alia* the voting right in the shareholders' meeting) and property rights (*inter alia* the right to claim payment of dividends). Generally, there is no shareholder liability except in cases of violation of the principle of capital preservation (*Grundsatz der Kapitalerhaltung*) and in cases of damaging influence on the management board (*Vorstand*), supervisory board (*Aufsichtsrat*) or other representatives of the AG. Only the managing directors and the members of the supervisory board can be held liable under certain circumstances (see below).	A KG has two different types of partners: general partners (*Komplementäre*) and limited partners (*Kommanditisten*). All of them are entitled to co-administration rights (*inter alia* the voting right in the partners' meeting or the right to request the convenience of the partners' meeting) and property rights (*inter alia the right to claim profit participation*). The general partners (*Komplementäre*) are fully personally, jointly, and severally liable for obligations of the KG. Any agreement to the contrary is ineffective *vis-à-vis* third parties. The limited partners (*Kommanditisten*) are liable only up to the amount of the specific capital contribution (*Vermögenseinlage*) *vis-à-vis* the KG's creditors. The liability shall be excluded to the extent that the contribution has been made. However, the limitation of liability becomes only effective upon registration of the KG in the commercial register (*Handelsregister*). If the KG commences business before it has been registered in the commercial register, each limited partner (*Kommanditist*) who consented to the commencement of business shall be liable for obligations of the partnership which incurred prior to its registration to the same extent as a general partner (ie fully and personally).

	Limited Liability Company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)	**Stock Corporation** (*Aktiengesellschaft* – ***AG***)	**Limited Partnership** (*Kommanditgesellschaft* – ***KG***)
Shareholders list; transfer of shares	The shareholders are registered in a shareholders list to be filed with the commercial register. The shares in a GmbH are alienable and inheritable and may be transferred by a deed of assignment and an agreement establishing a shareholder's obligation to transfer a share, each in notarised form. However, an agreement concluded without required notarial form becomes valid once the deed of assignment is concluded. The articles of association may stipulate that the transfer of shares is made dependent on further conditions, in particular the company's consent (*Vinkulierung*). Once a change in the person of a shareholder or the extent of their participation becomes effective, the managing directors shall submit without undue delay (*unverzüglich*) a (new) signed list of shareholders to the commercial register indicating the last name, first name, date of birth and place of residence of the shareholders, as well as the nominal values and the consecutive numbers of shares to which the shareholders have subscribed.	Registered shares (*Namensaktien*) shall be registered in the company's share register (*Aktienregister*) and may only be transferred by endorsement (*Indossament*), whereas bearer shares (*Inhaberaktien*) can be transferred without any obligation of notarisation. Therefore, bearer shares (Inhaberaktien) are more easily marketable than registered shares (*Namensaktien*). The articles of association may subject the transfer of registered shares to the consent of the company (*Vinkulierung*).	Since partnerships (*Personengesellschaften*) as the KG are, in principle, designed for a rather small number of partners (contrary to corporations (*Kapitalgesellschaften*)), there is no legal requirement of a partners list. The shares in a KG can be transferred by assignment, subject to the consent of the other partners. A notarisation is not required. The entry of a new (*general or limited*) partner shall be submitted for registration in the commercial register (*Handelsregister*). In addition, his/her legal succession to all the rights and obligations of the former limited partner (*Nachfolgevermerk*) has to be registered. Thus, the capital contribution (*Vermögenseinlage*) made by the former partner is attributed to the new partner and the personal liability of the latter is thereby excluded.
Term	Each of the companies listed herein is either incorporated for a limited term or for an unlimited term, as stated in the respective articles of association.		



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	Limited Liability Company (*Gesellschaft mit beschränkter Haftung* – ***GmbH***)	**Stock Corporation** (*Aktiengesellschaft* – ***AG***)	**Limited Partnership** (*Kommanditgesellschaft* – ***KG***)
Publication	Apart from the abovementioned obligations regarding the shareholders list, there are, in principle, no general notification obligations for participations of a GmbH in other companies and for participations in a GmbH. However, if a GmbH holds participations in an unlisted or a listed AG, the notification obligations pursuant to the AktG or, respectively, the Securities Trading Act (*Wertpapierhandelsgesetz* – ***WpHG***) may apply (see the column to the right).	There are several disclosure obligations for the listed AG (*börsennotierte AG*), such as: – according to the Market Abuse Regulation (*Marktmiss-brauchsverordnung* – ***MAR***), all issuers shall immediately disclose inside information ie information that, if made public, would be likely to affect the stock market price or market price of the relevant securities (ad-hoc-releases); – executives of issuers shall disclose to the issuer and the competent authority any proprietary trading in shares or debt securities (so called Directors' Dealings); – issuers of financial instruments subject to the ad-hoc-obligation shall keep insider lists containing all persons who have access to insider information of an issuer; – the WpHG stipulates *inter alia* that anyone whose shares exceed or fall below a certain percentage of the voting rights of a listed company shall without undue delay (*unverzüglich*) notify the issuer and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – ***BaFin***); and – the AktG stipulates that as soon as the company holds more than one fourth of the shares of another domestic (unlisted) corporation, or a majority holding in another enterprise, it shall promptly inform such enterprise thereof in writing. The unlisted AG (*nicht börsennotierte AG*) is subject to the last named obligation as well.	If the business name (*Firma*) of a partnership is changed, the seat of the partnership is transferred to another location, the domestic business address is changed, a new partner joins the partnership, or a partner's power of representation is changed, such facts need to be submitted for registration in the commercial register (*Handelsregister*).

	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Corporate bodies	The GmbH has two mandatory corporate bodies: – the shareholders' meeting (*Gesellschafterversammlung*); and – the managing director(s) (*Geschäftsführer*). A supervisory board (*Aufsichtsrat*) is, in principle, not mandatory for a GmbH, however, a supervisory board can be formed voluntarily (*fakultativer Aufsichtsrat*). Whereas, the formation of a supervisory board is in some cases mandatory (*obligatorischer Aufsichtsrat*). In particular, an obligation may arise from the laws on co-determination (*Mitbestimmungsgesetze*), such as: – GmbHs with usually more than 2,000 employees according to the Co-Determination Act (*Mitbestimmungsgesetz* – ***MitbestG***); – GmbHs with usually more than 500 employees in a company that has emerged from a cross-border merger, according to the Law on Employee Participation in a Cross-Border Merger (*Mitbestimmungsgesetz bei einer grenzüberschreitenden Verschmelzung* – ***MgVG***); and – GmbHs with usually more than 500 employees according to the One-Third Participation Act (*Drittelbeteiligungsgesetz* – ***DrittelbG***).	The AG has three mandatory corporate bodies: – the management board (*Vorstand*); – the supervisory board (*Aufsichtsrat*); and – the shareholders' meeting (*Hauptversammlung*).	The KG has two mandatory partnership bodies: – the partners' meeting (*Gesellschafterversammlung*); and – the managing director(s) (*Geschäftsführer*). An advisory board (*Beirat*) is not mandatory for a KG. However, an advisory board can be formed voluntarily.

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	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Shareholders' meeting	The shareholders' meeting (*Gesellschafterversammlung*) is the forum in which the shareholders exercise their rights. The shareholders' meeting has the following rights and duties: – determination of the content of the articles of association; – appointment and dismissal of the managing directors (*Geschäftsführer*); – issue instructions to the managing directors; – regulation of audits and supervision of the management; – appointment of authorised officers (*Prokuristen*) and authorised representatives (*Handlungsbevollmächtigte*); and – approval of the annual budget and the annual accounts. Unless the articles of association or mandatory law provide for a higher majority, all shareholders' resolution shall be passed with a simple majority of the votes cast. Fundamental issues regarding the company eg amendments to the articles of association, require regularly a higher majority.	The shareholders' meeting is the forum in which the shareholders exercise their rights. It is convened by the management board and decides mainly on the fundamental issues of the AG, such as: – appointment and dismissal of the shareholder representatives on the supervisory board; – relief of the members of the management board and the supervisory board; – appropriation of the balance sheet profit; – formal acceptance of the actions of the management board and the supervisory board; – amendments to the articles of association; and – capital measures etc. An unwritten competence of the shareholders' meeting shall also exist for management measures in the case a restructuring of the AG envisaged by the management board interferes with the core competence of the shareholders' meeting to determine the constitution of the AG (*Holzmüller- and Gelatine-doctrine*). Unless the articles of association or mandatory law provide for a higher majority, all shareholders' resolution shall be passed with a simple majority of the votes cast.	The partners exercise their rights in the partners' meeting. It decides mainly on the fundamental issues of the KG, such as: – amendments of the partnership agreement (*Gesellschaftsvertrag*); – admission of new partners; – amendments to partner rights; and – decisions on structure and organisation of the partnership. The voting rights conform to the amount of shares held by the respective partner. Limited partners (*Kommanditisten*) are also entitled to participate in the partners' meeting and to request the convenience of a partners' meeting, but only for good cause. Generally, the partners are free in determining the required majorities for resolutions in the partnership agreement (*Gesellschaftsvertrag*) except of resolutions concerning the core area (*Kernbereich*) of a partner eg interferences in the right of profit participation or in the voting right. In respect thereof, the respective partner's consent is required.

	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Management	The managing director(s) have to be natural persons. A shareholder can also be managing director. The managing directors conduct the company's day-to-day activities and represent the company in and out of court. However, ultimate authority within the company rests with the shareholders. All fundamental decisions regarding the company are reserved for their decision and the shareholders may also instruct the managing directors. If the GmbH has an advisory board (*Beirat*) or a supervisory board (*Aufsichtsrat*), the articles of association may stipulate that certain matters require an approval of the respective board (*reserved board matters*). A dismissal of managing directors is possible at any time by means of a shareholders' resolution adopted by simple majority.	The management board (Vorstand) may comprise of one or more (natural) persons appointed by the supervisory board (*Aufsichtsrat*) for a period of up to five years. In addition to the act of appointment (*Bestellung*), a service agreement (*Dienstvertrag*) is concluded between the respective member of the management board and the AG. This service agreement forms the basis of the remuneration claim of the management board members. The members of the management board can be dismissed at any time by the supervisory board (*Abberufung*) for good cause (*aus wichtigem Grund*). If a service agreement has been concluded, the termination for good cause (*aus wichtigem Grund*) of this agreement by the supervisory board is required as well. The management board conducts the company's day-to-day business and represents the company in and out of court. In principle, the management board is not bound by instructions from the supervisory board or the shareholders' meeting. However, the articles of association or the supervisory board can stipulate that certain measures or transactions may only be performed with the approval of the supervisory board or by resolution of the shareholders' meeting.	The KG is managed, in principle, by its general partners (*Komplementäre*). The general partners manage the partnerships' day-to-day activities and represent it *vis-à-vis* third parties. Actions that exceed the ordinary scope of the partnership's commercial business require a resolution of all partners. Generally, the general partners (*Komplementäre*) are liable *vis-à-vis* the partnership and the limited partners (*Kommanditisten*) for violation of their duties as directors. The limited partners are, in principle, excluded from the management of the KG. However, it is possible to assign the management to a limited partner in the partnership agreement (*Gesellschaftsvertrag*). In principle, it is possible to appoint an external managing director but due to the principle of self-organisation (*Grundsatz der Selbstorganschaft*), the partners shall not be excluded from the management of the KG completely.

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	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Company's representation	The GmbH is represented by its managing directors *vis-à-vis* third parties and in court. If several managing directors have been appointed, they generally represent the company jointly, although other provisions regarding the representation may be stipulated within the articles of association. It is, for example, possible to link the power of representation of a managing director to an external authorised officer (*Prokurist*) and vice versa. An internal limitation of the managing directors' power of representation of the company has no legal effect towards third parties.	The management board (*Vorstand*) is authorised to represent the company *vis-à-vis* third parties and to define the guiding principles of the company's policy and strategy. Regarding the representation of the AG, the articles of association can provide for various mechanisms, such as joint representation by all management board members or individual representation by each management board member or, alternatively, representation by specific management board members. The tasks of the management board can be split among the individual board members, for example, by appointing a CEO, a CFO etc. Nevertheless, each management board member remains responsible for the actions of the whole management board. The supervisory board (*Aufsichtsrat*) represents the company towards the members of the management board.	The general partners (*Komplementäre*) are entitled by law to represent the partnership *vis-à-vis* third parties. It is possible to conclude deviating provisions within the partnership agreement (*Gesellschaftsvertrag*). It can be stipulated, that all or several general partners are only entitled to represent the partnership jointly or jointly with an external authorised officer (*Prokurist*). The limited partners (*Kommanditisten*) are explicitly excluded by law from the organ representation (*organschaftliche Vertretung*) of the partnership. This legal provision cannot be excluded within the partnership agreement. It is, however, possible to assign procuration (*Prokura*) to a limited partner.

	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Managing director's liability	The managing director(s) shall conduct their duties regarding the company's affairs with the due care of a prudent businessman (*Sorgfalt eines ordentlichen Geschäftsmannes*). If the managing directors violate this duty, they are severally and jointly (*gesamtschuldnerisch*) liable to the company for any damage arising thereof. However, they shall not be deemed to have violated this duty if, at the time of taking the entrepreneurial decision, they had good reason to assume that they were acting on the basis of adequate information for the benefit of the company (Business Judgement Rule). In principle, managing directors are not liable to third parties for obligations of the corporation. In some cases, however, managing directors can be liable to third parties, such as: – withholding of salaries or non-payment of social security contributions; – violation of the bankruptcy filing obligation; – removal of assets in the event of over-indebtedness or insolvency; and – breach of tax obligations.	The members of the management board (*Vorstand*) shall conduct their duties regarding the company's affairs with the due care of a prudent and conscientious manager (*Sorgfalt eines ordentlichen und gewissenhaften Geschäftsleiters*). If members of the management board violate this duty, they shall be severally and jointly (*gesamtschuldnerisch*) liable to the company for any resulting damage. However, they shall not be deemed to have violated this duty if, at the time of taking the entrepreneurial decision, they had good reason to assume that they were acting on the basis of adequate information for the benefit of the company (Business Judgement Rule). This also applies for members of the supervisory board (*Aufsichtsrat*). In deviation to the members of the management board, the members of the supervisory board shall conduct their duties regarding the company's affairs with the due care of a prudent and conscientious monitor (*Sorgfalt eines ordentlichen und gewissenhaften Überwachers*). In principle, members of the management board are not liable to third parties for obligations of the corporation. In some cases, however, members of the management board can be liable to third parties, such as: – withholding of salaries or non-payment of social security contributions; – violation of the bankruptcy filing obligation; – removal of assets in the event of over-indebtedness or insolvency; and – breach of tax obligations.	Contrary to the limited partners (*Kommanditisten*), general partners (*Komplementäre*) are fully and personally liable towards third parties (see above). If the general partners as managing partners violate their duties towards the KG, they can be held liable by the KG.

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	Limited Liability Company *(Gesellschaft mit beschränkter Haftung – **GmbH**)*	**Stock Corporation** *(Aktiengesellschaft – **AG**)*	**Limited Partnership** *(Kommanditgesellschaft – **KG**)*
Supervisory board; advisory board	The supervisory board (*Aufsichtsrat*) of a GmbH is – unlike in an AG – integrated in the hierarchical system of the GmbH ie subordinated to the shareholders' meeting. This also applies to the mandatory supervisory board. The duties of the GmbH's supervisory board basically correspond to those of the supervisory board of an AG. Apart from a supervisory board, a GmbH may also have an advisory board (*Beirat*). The duties of the advisory board shall be stipulated in the articles of association, however, the tasks mandated by law to the managing directors and shareholders are not transferable, such as: – organic representation (*organschaftliche Vertretungsmacht*) of the company; – registration and submission obligations to the commercial register; – amendments to the articles of association; and – other structural changes in fundamentals.	The supervisory board (*Aufsichtsrat*) is a monitoring and advising corporate body of the AG and is generally elected by the shareholders' meeting (*Hauptversammlung*) for a period of up to five years. The supervisory board consists of three members, unless the articles of association stipulate a higher number of members. In the event that the AG is subject to one of the laws on Co-Determination (*Mitbestimmungsgesetze*), the supervisory board is composed of both representatives of the employees and the shareholders. In this case, the shareholders' representatives are elected by the shareholders' meeting in accordance with the regulations of the AktG, while the employees' representatives are elected by the employees in accordance with the provisions of the respective laws on Co-Determination (*Mitbestimmungsgesetze*). The members of the supervisory board may be granted remuneration for their activities by shareholders' approval or determination in the articles of association. The supervisory board is responsible for: – appointment and dismissal of members of the management board (*Vorstand*); – determination of the remuneration of the management board; – monitoring and advising the management board; – issuing the audit engagement; and – representation of the company in and out of court *vis-à-vis* the members of the management board.	It is possible but not required by law to form an advisory board (*Beirat*) for the KG. The details, such as appointment, composition, competences, etc shall be stipulated in the partnership agreement. The advisory board may consist of partners as well as external members. The tasks assigned to the advisory board may be, *inter alia*: – advice and/or control of the management; – representation of the KG *vis-à-vis* the general partners (*Komplementäre*). In principle, each member of the advisory board has the right to inform the managing partners.

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FOR MORE INFORMATION, PLEASE CONTACT:

Düsseldorf

Allen & Overy LLP
Dreischeibenhaus 1
40211 Düsseldorf

Tel. +49 211 2806 7000
Fax +49 211 2806 7800

Frankfurt

Allen & Overy LLP
Bockenheimer Landstrasse 2
60306 Frankfurt am Main

Tel. +49 69 2648 5000
Fax +49 69 2648 5800

Hamburg

Allen & Overy LLP
Kehrwieder 12
20457 Hamburg

Tel. +49 40 82 221 20
Fax +49 40 82 221 2200

Munich

Allen & Overy LLP
Maximilianstrasse 35
80539 München

Tel. +49 89 71043 3000
Fax +49 89 71043 3800

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