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Doing business Germany

A comparative guide

July 2024

A guide to doing business in Germany

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.

No. **Question**

A. Legal system and landscape

1 Is the system of law in your jurisdiction based on civil law, common law or something else?

The legal system of the Federal Republic of Germany falls within the civil law tradition, tracing its origins to Roman law. With its important role in the codification of civil law, German legislation has influenced legislation in other jurisdictions. The main sources of law are EU legislation, the German Constitution (for historic reasons still named *Grundgesetz*) and codified laws passed by the Federal Parliament (*Bundestag*) and/or the parliaments of the individual Federal States (*Bundesländer*).

The courts are not legally bound by previous decisions, but lower courts tend to follow the decision logic of higher courts, especially the federal courts.

B. Entity establishment

2 What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

There are various types of business structures, including but not limited to:

- Sole Proprietorship Businesses (*Einzelkaufmännisches Unternehmen*), which is an unincorporated business owned by a single natural person (entrepreneur) and operated in his or her name or under a trade name. It is not a legal entity and cannot have any rights and obligations of its own;
- Partnerships (*Personengesellschaften*) in the form of unregistered Civil Law Partnerships or – since 1 January 2024 in the form of a Registered Civil Law Partnership (*eingetragene Gesellschaft bürgerlichen Rechts* or *eGbR*). General Partnerships (*Offene Handelsgesellschaft* or *OHG*), Limited Partnerships (*Kommanditgesellschaft* or *KG*, mostly structured as a *GmbH & Co. KG* with a GmbH acting as sole general partner). All Partnerships hold in common that they need <u>two or more</u> natural or legal persons as partners/shareholders and that all Partnerships have now the capacity to hold assets and to assume liabilities. During recent years, the differences between the different types of Partnerships have constantly been reduced, however some differences in detail remain. In particular, the KG differs from the other types of Partnerships by the fact, that a KG has a least one general partner with unlimited liability and limited partner(s); in contrast thereto all partners to the other types of Partnership have at all times an unlimited liability;
- Corporations (*Kapitalgesellschaften*), primarily in the forms of Limited Liability Companies (*Gesellschaft mit beschränkter Haftung* or *GmbH*) and its "little sister", the Entrepreneur Company with limited liability (*Unternehmergesellschaft (haftungsbeschränkt*) or *UG (haftungsbeschränkt)*), Stock Corporation (*Aktiengesellschaft* or *AG*), Partnership Limited by Shares (*Kommanditgesellschaft auf Aktien* or *KGaA*) and the European Stock Corporation (*Societas Europaea* or *SE*).

3 Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

As a general rule, any non-domestic company may carry on business directly in Germany. But, depending on the nature of the business and the degree of physical presence in Germany, the non-domestic entity needs to comply with several notification or registration obligations, in particular from a trade register, tax and social security perspective and may have to have a German branch registered with the German commercial register (*Handelsregister*).

In general, Germany follows the rule of seat, so, any company would be qualified depending on where its seat is located. But this rule is largely superseded by treaty obligations/EU law and case law-derived obligations. Therefore, investors are generally free to use companies incorporated in any EU member state for business purposes in Germany even if such companies exclusively do business in Germany and, therefore, have their effective seat of administration in Germany.

4 Are there any capital requirements to consider when establishing different entity types?

Yes, there are capital requirements for some legal forms. The minimum share capital for a German GmbH amounts to EUR 25,000 (unless the company is formed as an Entrepreneur Company with limited liability (*UG (haftungsbeschränkt)*), the minimum share capital for a German AG is EUR 50,000 and the minimum statutory share capital of an SE amounts to EUR 120,000.

5 How are the different types of vehicles established in your jurisdiction? And which is the most common entity / branch for investors to utilize?

A sole trader or Sole Proprietorship Businesses (*Einzelkaufmännisches Unternehmen*) would generally begin to carry on business without any formal set-up, pre-registrations or permits being required. It would be held to notify the trade register and comply with several other notification/registration obligations, depending on the size, quality and nature of the business.

A Partnership requires the partners to agree on the Partnership's Articles of Association (which do not have to be recorded in writing but often are in writing, at least for tax purposes, in order to reflect the peculiarities of the business operations and the relationship amongst the partners). The partners apply for the registration of the Partnership in the respective register (either commercial register (*Handelsregister*) for OHG or KG or Civil Law or Partnership Register (*Gesellschaftsregister*) for the Registered Civil Law Company/*eGbR*.

The German law regulations applicable to Partnerships have recently been changed, by means of the Act on the Modernization of German Partnership Laws (in German: *Gesetz zur Modernisierung des Personengesellschaftsrechts (PersonengesellschaftsrechtsmodernisierungsG* – MoPeG)), which brings about changes to more than a hundred other Acts and entered into force on 1 January 2024. With the changes, the possibility and/or obligation for a Civil Law Partnerships to register with the *Gesellschaftsregister*, but – pursuant to the Corporate Income Tax Modernization Act (*Körperschaftsteuermodernisierungsgesetz* (*KöMoG*)) also a possibility to apply for tax treatment as if the partnership were a corporation.

The formation of corporations, whether in the form of a UG (*haftungsbeschränkt*), GmbH, AG, KGaA or SE requires the execution of a formation deed, agreement on the Statutes, other formal steps as well as registration with the commercial register. Further details cannot be described here.

Certain activities are subject to public permits, examples would include matters subject to financial regulation (banking and insurance business), pharmaceutical business, and many others. For certain activities, the number of eligible legal forms is limited.

The most prevalent entities would include Limited Partnerships, in particular in the form of GmbH & Co. KG's with a GmbH acting as sole general partner (in particular in privately held SME (*Mittelstand*) cases as well as for cases involving real estate), GmbHs (which would also largely be considered to be the best form for German subsidiaries of international groups) and AG's. The number of SE's has increased substantially; the number of KGaAs in Germany has constantly remained low during the last couple of years.

6 How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Operations and management as well as general corporate governance largely depend on the type/legal form of the respective entity.

KG's are generally managed by their general partners, who can be subjected to approval by the shareholders (meeting). In cases of GmbH & Co. KG's, it is the GmbH, represented by its Managing Directors (*Geschäftsführer*) who manages the KG's business.

As a general rule, German GmbHs come with two corporate bodies, namely the Managing Directors (*Geschäftsführer*) on the one hand and the shareholders (meeting) (*Gesellschafter, Gesellschafterversammlung*) on the other hand. While the management of the GmbH is incumbent on the Managing Directors, by means of the Managing Director Service Agreement, the Articles of Association and/or the Rules of Management, etc. the Managing Directors leeway/elbow room can be reduced (substantially), so that the shareholders (meeting) can very much influence the GmbH's management. The shareholder meeting is also entitled to issue instructions to the Managing Directors, which the Managing Directors are held to follow, unless unlawful. In some constellations, German GmbHs come with additional corporate bodies, such as an Advisory Board (*Beirat*), a Shareholder Committee or a Supervisory Board (*Aufsichtsrat*). These corporate bodies can be installed voluntarily, by means of the Statutes. Under certain circumstances, namely where the regular number of employees exceeds a certain threshold, there can be an obligation to install a Supervisory Board. The members of such a Supervisory Board will then partly be elected by the employees. Where a GmbH regularly employs more than 500 employees, pursuant to the One Third Participation Act, a Supervisory Board must be installed, one third of whose members will be elected by the employees, where a GmbH regularly employs more than 2000 employees, pursuant to the Co-Determination Act, a Supervisory Board must be installed, half of whose members will be elected by the employees.

German AGs come with three corporate bodies, namely the Management Board (*Vorstand*), the Supervisory Board and the General Meeting (*Hauptversammlung*). Division of tasks and responsibilities is more complex than it is for a GmbH. The Management Board has more far-reaching competencies than the Managing Director of a GmbH. The Management Board is <u>not</u> subject to instructions by the Supervisory Board or the General Meeting (while it is certainly possible to implement catalogues of reserved matters). As regards the composition of the Supervisory Board, the statements with respect to employee participation/co-determination made with respect to the GmbHs apply mutatis mutandis.

7 Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

There are no general restrictions related to the persons acting as authorized representatives or shareholders, other than those deriving from general (civil) law and related to the mental capacity and legal age. Embargoes, sanctions, etc. must of course be taken into consideration.

As a general rule, an individual may become an authorized representative, if of legal age and unless disqualified from being an authorized representative (for example because of certain convictions, the nonexistence of which must be proven).

Any Partnership must have managing partners, who, in the case of commercial partnerships will also be registered with the commercial register. In cases of GmbH & Co. KG's, it is possible to have a legal entity (the GmbH) appointed as (sole) general partner, which in turn would be represented by its Managing Directors (*Geschäftsführer*) so that ultimately, there will always be an individual bearing responsibility.

Corporations must always have the relevant number of authorized representatives, in most cases, the appointment of one Managing Director of a GmbH or the appointment of one Management Board Member of an AG is sufficient. Where an entity has other corporate bodies, such as a Supervisory Board, also the members to such Board must be appointed.

There are no local residency or nationality or visa requirements for individuals to act as authorized representatives. Difficulties can arise where it is (almost) impossible for the individual to actually enter Germany (for visa requirements) and/or where all Managing Directors reside outside of Germany, in which case it can be difficult to argue that the principal/main place of business is in Germany (which again can create tax issues and/or issues under the Rule of Seat doctrine followed by the German Federal Supreme Court at least for non-EU member state jurisdictions).

For some industries, persons to be appointed as authorized representatives must possess a specific skill set and education which will be verified by the competent regulators.

Other than deriving from general provisions of law, embargoes, sanctions, legal capacity, mental capacity, legal age, etc., there are no specific (residency, nationality, etc.) requirements for individuals to act as shareholders.

As a general rule, there is no maximum number of shareholders, provided that Partnerships (other than the so-called Public Partnerships or *Publikums-KGs*) and GmbHs are considered and have been designed to be "personalistic" companies not necessarily designed for numerous shareholders.

8 Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

From a German corporate law perspective, there are no specific restrictions in expanding business operations in Germany (other than those deriving from general laws and related to prohibited goods, requirements for public permits, abidance by regulations). Therefore, unless specifically noted in the underlying constitutional documents for the respective entity or by lawful instructions of the shareholders, entities and establishments in Germany are free to work with trade/commercial agents and resellers. The EU Sales Agent Directive has been transposed into German law and is applicable, including to the extent related to the Agent's claim for compensation in case of termination of the agency relationship. Under certain circumstances, resellers can also be eligible for the corresponding compensation.

C. Entity operation - please answer the following questions only for the most common entity / ies within your jurisdiction

C1. Governance

9 Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

The main regulation in that regard is the German Corporate Governance Code (*Deutscher Corporate Governance Kodex*, DCGK), which, however, is primarily addressed to publicly listed corporations. Content-wise, it is generally in line with comparable codes for publicly listed companies in other jurisdictions, with some claiming that the German Code comes with a comparatively greater regulatory density and stringency, a statement which is disputed by others, who claim that many topics are regulated in a more concrete and thus ultimately more restrictive manner by such comparative codes and that the German Code would have to be qualified as more general and liberal on important issues of good supervision than comparable non-German codes. German law follows a comply-or-explain regime, as set out in Section 161 of the German Stock Corporation Act. Pursuant to Preamble to the DCGK, "the recommendations and suggestions of the Code may serve as a guide for non-capital-market-oriented companies" and some say that it has a spillover effect on larger limited liability companies (GmbHs). Apart from the DCGK, there are recommendations for family held undertakings (*Governance-Kodex für Familienunternehmen* (www.kodex-fuer-familienunternehmen.de)) and a Public Governance Code (*Public Corporate Governance Kodex des Bundes*) for companies in which the Federal Republic of Germany holds participations.

C2. Capital

10 What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

German law provides for various mechanisms by which working capital can be provided. If financing is to be provided as equity financing, this can for example be done by having the shareholders make additional equity contributions against issuance or without issuance of shares, the latter also referred to as informal additional equity contributions. Debt financing is also available, provided that loans can be obtained from/granted by the shareholders, companies affiliated with the shareholders/other group companies or third parties. Loans provided by shareholders and their affiliates are subject to a specific regime, pursuant to which they are inferior in rank in the event of insolvency and repayments that have occurred within certain time limits prior to the debtor becoming insolvent are subject to clawback. Converting shareholder loans into equity is generally possible, but more complex than it tends to be in other jurisdictions. Converting shareholder loans into equity can lead to tax issues, in particular where the fair market value of the loan receivable is lower than its face value. Any debt-to-equity swap must therefore be scrutinized. Mezzanine financing can also be resorted to. Apart from that, all other customary ways of financing are available as well, including factoring and fine trading.

C3. Return of proceeds

11 What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

There are various ways of returning equity or proceeds, which cannot be described in full detail here. The options available and steps to be taken for payments by the subsidiary to its shareholders depend on the legal form of the respective subsidiary and the type of proceeds or equity that shall be paid to the shareholder.

Ordinary dividend distributions are possible. They will generally be based on yearly financial statements and resolved upon by the corresponding corporate body, i.e. generally the shareholder meeting or the General Meeting. Dividend distributions must be fed from profits, which can under certain circumstances also include amounts stemming from profit or capital reserves.

In the case of GmbHs, it is generally possible to resolve on interim dividend distributions. Such interim dividend distributions must be based on the respective entity's financial planning, which must allow the assumption that dividends at least in the amount of the interim dividend distribution will in fact be generated until the end of the financial year for which the interim dividend distribution is made. To the extent excess interim dividends have been paid to the shareholders, the shareholders are under no obligation to repay any such excess amounts.

The acquisition of own shares/treasury shares by a GmbH comes with several limitations and prerequisites and would generally not be considered a customary way of financing dividends or payments to shareholders.

Capital maintenance rules must always be factored in, and it must be confirmed that the payment of the dividend, interim dividend, or other repayment to the shareholder does not lead to a violation of these rules.

It should be noted that German law comes with a rather detailed and sometimes complex system of capital maintenance rules and that apart from these rules, in the case of AG's, financial assistance rules must also be taken into consideration.

To the extent the German company disposes of capital or profit reserves which can be paid out without triggering a negative balance sheet and/or without a violation of German capital maintenance rules, the amounts of such reserves can be paid out to the shareholders. The exact mechanism to be followed depends on the circumstances of the individual case.

It is possible to reduce the nominal share capital of a GmbH and to use the proceeds generated by such nominal share capital reduction for repayments to shareholders. This requires a formal procedure to be followed, with notarial involvement, official publications, etc. and is a process that will require at least one year to be accomplished. Against this background, it can be recommendable to structure equity contributions by shareholders such that they are divided into nominal share capital and other equity (fed through share premium or informal additional equity contributions, which are generally not subject to capital maintenance rules).

C4. Shareholder rights

12 Are specific voting requirements / percentages required for specific decisions?

The following applies to the GmbH:

In principle, a resolution is adopted by a simple majority of the votes cast. Votes are calculated on the basis of capital shares. Each EUR 1 entitles the holder to one vote. The Articles of Association may provide for deviating regulations, such as multiple voting rights or the dependence of the voting right on the payment of the contribution. Abstentions result in the votes being deemed not to have been cast.

The law requires a qualified (i.e., three-quarters) majority of the votes cast in a number of cases:

- Amendment of the Articles of Association, including ordinary increase or decrease of the share capital;
- Capital increase from company funds;
- Dissolution of the limited liability company;
- Conversion of the limited liability company into a civil law partnership, a commercial partnership or a corporation;
- merger of the GmbH with a commercial partnership or a corporation;
- splitting up of the GmbH or splitting off of a part of the business for incorporation or for new incorporation (demerger);
- transfer of all or part of the assets.

The majority requirements for the following events are at dispute, with many saying that the resolutions are subject to at least a qualified, i.e. ¾ majority:

- Exclusion resolution
- Continuation resolution and
- resolution related to the approval of an Enterprise Agreement (*Unternehmensvertrag*).

The Articles of Association/Statutes may provide for additional cases in which qualified majority requirements apply, the Statutes can also provide for unanimity as the underlying concept and/or for higher percentages. It is also possible to combine provisions in a catalogue of reserved matters with specific majority requirements.

13 Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

In German GmbHs, it is generally possible for the shareholder meeting to issue instructions to the Managing Directors. To the extent such instructions are lawful, the Managing Directors are held to abide by the corresponding instructions. To the extent that they believe that the corresponding instructions are not lawful, they must inform the shareholder meeting accordingly and, to the extent that the matter cannot be resolved, may be facing a delicate decision to take.

There is no right of the shareholder meeting to give instructions to the Managing Directors to the extent such instructions are not lawful, would conflict with the duties of the Managing Director or may trigger personal liability of the Managing Director vis-à-vis third parties. In particular, the shareholder meeting cannot instruct the Managing Directors to not apply for insolvency proceedings, if and to the extent the prerequisites under German law for a corresponding obligation on the Managing Director being triggered, are fulfilled. To the extent the Managing Director abides by lawful instructions, it cannot be held liable for the corresponding action by the Company. Under certain circumstances, it can be recommendable for the Managing Director to insist on being held harmless and/or indemnified from consequences of certain actions that the Managing Director is held to take on the basis of instructions.

In a German AG, there is no possibility for the General Meeting to issue instructions to the (Members of the) Management Board.

C5. Employment

14 What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Right / Protection	Details
National Minimum Wage	All employees are entitled to be paid at least the national minimum wage for all working hours. The current hourly rates of pay are: As of 1 January 2024: EUR 12,41 (gross). There are exceptions from the entitlement to minimum wage e.g. for trainees.
Holiday	Employees are entitled to 24 working days paid statutory holiday each year, if they have a six-day working week; and 20 working days paid statutory holiday each year if they have a five-day working week. Usually, in employment contracts the contractual parties agree on longer paid holiday, where 30 working days paid holiday is standard market practice.
Working hours	Employees' average hours should not exceed 48 hours per week (in a six-day working week). Therefore, the average hours per day should not exceed eight hours.

	However, there is the option to exceed the working hours per day for a limited period of time to a limit of 10 hours per day and 60 hours per week (in a six-day working week). The employer is committed to compensate this within six calendar months or within 24 weeks by achieving an eight-hour working day in average.
Rest periods	Employees are entitled to the following rest periods: • a rest break of 30 minutes when working more than six hours per day • a rest break of 45 minutes when working more than nine hours per day • 11 hours uninterrupted rest between two working days resp. shifts • Sundays and public holidays are rest days (if exceptionally the employee must work on Sundays or on public holidays, the employer has to offer an official workday as a rest day) Collective bargaining agreements can contain exceptions.
Pension rights	Employees who reach retirement age and have completed the minimum insurance period as well as possibly other special eligibility requirements receive old-age pension. Basic old-age pension: Employees are entitled to a basic old-age pension. The prerequisite is that the employee: • has reached a certain age (pensionable age: for anyone born after 1 January 1964, the basic age threshold of 67 will apply); • has completed a minimum insurance period (qualifying time); and • has fulfilled certain special insurance requirements for some old age pensions. Early pension due to age: Employees can apply for an early pension from the age of 63 if they fulfill certain requirements. As compensation for the longer pension period, for each month up to the statutory retirement age (for the old-age pensions of severely disabled people up to 65), the pension is reduced by approximately 0.3% (discount). All employees, including contracted employees and workers, are obliged to belong to an old-age insurance system. This also applies to self-employed people in certain professions, including farmers, artists, journalists and members of professions organized into associations, such as doctors, architects, craftsmen, pharmacists, engineers, accountants and lawyers, along with others. Self-employed people who are not subject to compulsory insurance can join the state pension scheme through compulsory insurance or voluntary insurance. Low-paid workers (regular remuneration of a maximum of EUR 450 per month) who started their employment after 31 December 2012 are subject to compulsory pension obligations. They can however ask to be exempted from compulsory insurance. Compulsory pension obligations do not apply to short-term employees and people who have worked less than three months or no more than 70 days in the calendar year and do not exercise this employment as a profession.
Discrimination	There is a prohibition of discrimination in employment and occupation based on the following personal characteristics: • race • ethnic origin

	• religion or belief • political ideology • sexual identity • gender reassignment • age • disability In addition, gender quotas are set for listed companies and/or companies subject to co-determination at the supervisory board level. Companies listed on the stock exchange and fully subject to co-determination must have 30% of the seats on their supervisory boards occupied by women.
Maternity leave / pay	Female employees are entitled to take up to 14 weeks' maternity leave (six weeks before delivery and eight weeks after delivery). Under certain circumstances the maternity leave after delivery can be up to 12 weeks (e.g. premature birth, multiple births, disability of the child). Maternity pay amounts to the average salary of the last 13 weeks before maternity leave. The statutory health insurance takes up to EUR 13 per working day. The difference to the average salary must be balanced by the employer itself. Afterwards, the employer gets the difference it has paid repaid by the compulsory insurance for employers as part of the pay-as-you-go system. After 14 weeks of maternity leave, there is the possibility to switch into parental leave. The parental leave can be taken by both parents. The parental leave can be up to three years and the time can be split between two parents. A parent can decide to not work at all or only work part-time. If employees have not taken the three years before their child's 3rd birthday, they can take the remaining time. In this context, parents are allowed to take 24 months parental leave in the time after the child's 3rd birthday without any permission of the employer while the remaining 12 months can be rejected because of operational reasons. Employees need to inform their employer in writing at least seven weeks before their child's 3rd birthday resp. 13 weeks between the child's 3rd and 8th birthday in advance that they are planning to take parental leave. Furthermore, the employee's job is protected during parental leave and in most cases, the employee can even return to the same position he/she had before the leave. The employee enjoys special dismissal protection during both maternity leave and parental leave. In order to unilaterally terminate the employment relationship, the employer requires the approval of the competent German authority. Even though parental leave is generally an unpaid break, parents can apply for parental allowance. Parental allowance compensates for the loss of income when a parent stops working or reduces working hours to look after a new-born child. The allowance ranges from a minimum of EUR 300 to a maximum of approx. EUR 1,800 per month and is paid for a maximum period of 14 months if the other parent also claims parental allowance for at least two months. From 1 April 2024, parental allowance cannot be claimed if the annual taxable income of couples exceeds EUR

<table>
<tr><td></td><td>200,000, regardless of whether they are married or not. For single parents, who are solely entitled to parental allowance, the income limit is EUR 150,000.

In addition, there is the possibility to receive the so-called "parental allowance plus". Parents who want to work part-time after the birth of a child can receive a supplement to their part-time salary for a maximum period of 32 months.</td></tr>
<tr><td>Paternity leave</td><td>Paternity leave is part of the parental leave. The respective information above applies.</td></tr>
<tr><td>Shared parental leave</td><td>The respective information above about parental leave applies.</td></tr>
<tr><td>Statutory sick pay</td><td>The statutory sick pay provides for continued renumeration by the employer up to six weeks of illness. After six weeks the health insurance pays up to 70% of the gross pay and max. 90% of the net pay for a maximum term of 78 weeks.</td></tr>
<tr><td>Statutory notice periods</td><td>For ordinary dismissals, statutory minimum notice periods apply.

The notice period for employees is four weeks to the 15th or to the end of a calendar month irrespective of the seniority of the employee.

During the optional but customary probation period of up to six months, the statutory notice period is two weeks for the employer and the employee.

The length of these minimum notice periods for employers depends on the employee’s seniority with the employer and gradually increases over time. Up to a seniority of two years, the notice period is four weeks to the 15th or to the end of a calendar month. The notice period then increases in irregular intervals to up to seven months:

<table>
<tr><th>Seniority</th><th>Notice period (each effective to the end of a calendar month)</th></tr>
<tr><td>after 2 years</td><td>1 month</td></tr>
<tr><td>after 5 years</td><td>2 months</td></tr>
<tr><td>after 8 years</td><td>3 months</td></tr>
<tr><td>after 10 years</td><td>4 months</td></tr>
<tr><td>after 12 years</td><td>5 months</td></tr>
<tr><td>after 15 years</td><td>6 months</td></tr>
<tr><td>after 20 years</td><td>7 months</td></tr>
</table>

Many collective bargaining agreements but also individual contracts – especially with white-collar or executiv

e employees – contain longer notice periods which prevail as they are more advantageous for the employees. If contractual notice periods are shorter than the statutory minimum notice periods, the longer statutory notice periods prevail.

There is no indemnity in lieu of notice under German law. Employees generally work throughout the term of the notice period. Sending employees on garden leave is only permitted in exceptional cases, especially where the employer made a valid reservation in the employment contract.

In order to end the employment relationship at an earlier date than the expiry of the statutory notice period, the parties can conclude a termination agreement.</td></tr>
</table>

	However, this is concluded by mutual agreement between employer and employee. Generally, a severance payment is agreed in the termination agreement. A dismissal for serious cause takes immediate effect without observing a notice period.
Unfair dismissal	The dismissal of an employee will be unfair due to the reasons mentioned below in section 15.
Statutory redundancy payment	There is no statutory severance in Germany. Employees are only entitled to severance payments under a social plan with the works council (often agreed on in the case of mass layoffs) or under a collective bargaining agreement. However, in practice, many employers and employees will agree on severance pay provisions to avoid lengthy court proceedings concerning the effectiveness of the termination. This severance will often amount to 50% of the monthly salary per year of service. However, this can vary significantly depending on the strength of the case for dismissal and the previous practice of the employer.
Statement of particulars	Employers are required to provide employees and workers with a written statement of certain terms of their employment one month after the agreed start of work at the latest.

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Under German labor law, there are two kinds of dismissals: ordinary dismissals and dismissals for serious cause. These two kinds differ in reason for dismissal, notice period and dismissal protection.

An unlimited employment contract can be terminated by the employer at any time by either an ordinary dismissal or a dismissal for serious cause. Alternatively, the parties can terminate the employment contract by mutual agreement.

The fixed-term employment contract ends automatically when the agreed term expires. If the employer and employee continue to execute the employment contract beyond its expiry date, the rules provided for an unlimited employment contract apply automatically. An ordinary dismissal of a fixed-term employment contract is not permissible unless the contract states otherwise. If a right to ordinary termination has been agreed, it applies to both parties. The right to execute a dismissal for serious cause cannot be excluded.

Ordinary dismissal

As a general rule, an ordinary dismissal is valid if the applicable notice period is observed and the dismissal does not violate public policy (e.g., if based on discriminatory grounds).

However, there are some restrictions. Employees in an operation with more than ten full-time-equivalent, and with more than six months' seniority, enjoy comprehensive dismissal protection under the Dismissal Protection Act. Accordingly, a dismissal has to be "socially justified", which means there has to be a specific reason for the dismissal. The Dismissal Protection Act sets out three particular categories of reasons that may socially justify a dismissal: (1) person-related reasons, (2) conduct-related reasons and (3) operational reasons.

1. A dismissal for person-related reasons is socially justified if the employee is unable to perform his/her contractual duties under the employment contract for reasons from his personal sphere. It is irrelevant if the employee is responsible for this inability or not. In practice, the most important circumstance leading to such inability is illness – either long-term illness or frequent short-term absences. However, effectively dismissing an employee due to illness is extremely difficult in

Germany. Pursuant to case law of German labor courts, there are three strict prerequisites for such dismissal: First, at the time the dismissal is declared, it must be presumed that the employee's absence due to illness will continue in the future which is generally indicated by severe absence times in the past (usually multiple weeks per year over a couple of years). Second, the continued absence has to be a serious detriment to the employer's business interests (e.g., loss of production or customers). Third, the employer's interests in the termination of the employment relationship have to outweigh the employee's interests in its continuation. As a dismissal is always only an ultima ratio, also a relocation to another job position or any other action to avoid the dismissal must be considered.

2. A conduct-related dismissal is socially justified if the employee deliberately breaches his/her contractual duties. According to case law, such dismissal in first instance requires a significant breach of duty by the employee to be lawful (e.g., unexcused absence or inappropriate conduct towards the employer or colleagues). Second, it must be likely that the employee will breach the contractual duties again in the future. In this context, the employer is in particular obliged to issue (usually several) formal warnings (in writing for proof). A conduct-related dismissal without at least one prior formal warning is usually invalid. Special attention should be paid to issuing effective formal warnings in compliance with the prerequisites set by German labor courts and in a properly documented way. Third, the employer's interests to terminate the employment relationship have to outweigh the employee's interests. For example, social data such as the employee's age, seniority, and number of dependents have to be considered to the advantage of the employee. Finally, given the dismissal's ultima ratio character, no less restrictive means may be available.
3. Dismissals for operational reasons are based on structural entrepreneurial decisions by the employer. A dismissal for operational reasons requires in a first step that the employee's job position ceases to exist due to an entrepreneurial decision of the employer, based either on external business reasons (e.g., a drop in the demand for a product) or on internal business reasons (e.g., a modification in production methods, closure of an entire business, or outsourcing of work to other companies). The underlying decision leading to the elimination of a job position is subject to review by a German labor court only to the extent to which it is arbitrary. Second, the employer has to carry out a social selection which is one of the key issues in the context of dismissals for operational reasons. If the employee at risk could also perform the job of a comparable employee, the employer has to assess whether the employee at risk enjoys greater social protection than the relevant colleagues being employed in the same operation. The statutory criteria for this selection process are age, seniority, maintenance obligations, and disabilities of the affected employees. In the end, the employee with the social criteria least worthy to protect would have to be dismissed. Third, there must not be any other open and reasonable job position on an appropriate hierarchy level that could be offered to the employee in question. This search for an open job position is not limited to the same operation but must also consider job positions in other operations of the same legal entity.

The notice letter only has to mention the reason for the dismissal in order to be valid in exceptional cases regulated by law. The law provides for such an exception, for example for pregnant employees. In this case, the termination must specify the exact reason in writing.

Within the scope of the Dismissal Protection Act, the employer is also obliged to inform the employee, on request, of the reasons which led to the social selection made. If the employer fails to do so, he/she may be liable for damages. However, the notice letter takes effect regardless.

Dismissal for serious cause

Employment relationships can also be terminated for serious cause. Such serious cause exists if facts exist on the basis of which – taking all circumstances of the individual case into account and weighing the interests of employer and employee – the employer cannot reasonably be expected to continue the employment relationship until the notice period has lapsed or – in employment relationships for a definite period – until the agreed term has ended. Some examples include repeated persistent refusal to work, theft of the employer's property, or work for a competitor of the employer.

Furthermore, a dismissal for serious cause has to be notified to the employee within two calendar weeks after the employer has obtained knowledge of the facts resulting in the dismissal. Otherwise, the dismissal is invalid.

The employer must, at the employee's request, immediately inform the employee in writing of the reasons for his/her dismissal. If the employer does not comply with this obligation, the dismissal remains effective, but the employer may be obliged to pay compensation for damages.

Collective dismissals

To ensure that the employment agencies are informed in a timely manner about an unusually high number of new unemployed persons, employers are obliged to report mass redundancies in writing. The obligation to notify depends on the size of the company and the number of redundancies planned in the same period.

A notification of collective redundancies is required if, within 30 calendar days, more than five employees are to be dismissed in an operation employing normally more than 20 and fewer than 60 employees; 10% of regularly employed employees or more than 25 employees in establishments employing normally at least 60 and fewer than 500 employees, and at least 30 employees in establishments normally employing at least 500 employees. Managing directors, executives, apprentices, and trainees are also considered employees.

The employer must also inform the works council of various details in writing. In a consultation procedure, the employer and the works council must negotiate on how to avoid dismissals and mitigate their consequences. The notification of collective redundancy for the unemployment agency must be accompanied by a statement of the works council.

Furthermore, a mass dismissal usually qualifies as an operational change resulting in the employer's obligation to enter negotiations with the works council about a reconciliation of interests and a social plan. Whereas the reconciliation of interests covers the conditions based on which the envisaged measures are to be implemented and executed, the social plan provides for actions in order to soften or compensate the disadvantages to the affected employees.

Costs / risks:

1. Severance pay

There is no statutory severance entitlement in Germany. As the underlying principle of German dismissal protection law is "in or out", a judge can only terminate court procedures by a judgment over a severance pay under special circumstances, especially when a continuation of the employment is unacceptable for the employee.

However, as wrongful dismissal procedures often last for a long time and the outcome is tricky to predict, employers usually accept a mutual settlement during the court proceedings, and therefore a termination of the employment relationship in return for payment of severance. The severance pay is usually calculated by the formula: half of the gross monthly salary per year of seniority. Depending on the justification for the dismissal and therefore the employer's chances of winning the case, this amount decreases or – more likely – increases. In case of dismissal without objective reasons, the severance pay is usually at least one gross monthly salary per year of seniority.

2. Dismissal formalities

All dismissals – both ordinary dismissals and dismissals for serious cause – have to be done in writing to be valid (originally signed by a competent company representative). The reasons for the dismissal in general do not need to and should not be stated in the notice letter. Compliance with formal requirements and a provable delivery of the notice letter in due time are crucial for an effective dismissal. Particular attention should be paid to these aspects to avoid unnecessary disputes and costs on the employer's part.

If a works council exists, it has to hear about the planned dismissal first, i.e., detailed information about the employee and the reasons for the dismissal have to be provided. Although this information can also be given verbally, written information is recommended for a stronger evidential basis in case of later disputes on the validity of the dismissal. Depending on whether the dismissal is ordinary or for serious cause, the works council has a certain number of workdays to process the request. It may consent to the dismissal, object to it, or remain silent. The employer may give notice even if the works council objects. However, notice may only be given after the applicable period for the works council hearing process has elapsed. If the works council is not informed properly, the dismissal is void.

3. Special dismissal protection

Certain categories of employees enjoy increased protection against dismissal, including severely disabled employees, pregnant employees, employees on maternity leave and employees on parental leave, etc. For these protected categories, dismissals are generally prohibited and only permitted in exceptional cases and with the prior consent of competent authorities.

Works council members also enjoy special dismissal protection, considering their office within the company. A dismissal of such employees is extremely difficult.

Unfair dismissal

If an employee wants to challenge the validity of a dismissal (both for ordinary dismissals and dismissals for serious cause), he/she has to file a wrongful dismissal claim at the competent labor court within three weeks from the delivery of the notice letter. Otherwise, the dismissal will be effective.

The vast majority of cases are mutually settled in court hearings – usually against payment of severance. Where in exceptional cases no agreement is reached, the employer has to demonstrate and prove that the applicable requirements for the dismissal were fulfilled. The labor court then rules whether or not the prerequisites for a lawful dismissal were met. If this was not the case, the labor court will generally judge that the employment relationship has not been terminated effectively and that the employee has to be reinstated.

Executives are also covered by the Dismissal Protection Act. In contrast to other employees, the works council does not have to be heard. Apart from that, the general principles of termination also apply to executives.

16 Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Works councils

In Germany there are no basic trade union organizations in the company. Instead, the works councils are the most important points of contact for operational problems. The works councils, in turn, work closely with the union.

The works council represents the interests of employees in the company. It monitors that the applicable laws, occupational safety regulations, collective agreements and organization-level agreements are observed by the employer. The works council also advocates the equal treatment of employees and the integration of foreign employees.

The works council has certain powers and organizational options within the company which enable it to fulfil its tasks.

The works council:

- must agree to every new hiring,
- must be heard before each dismissal,
- ensures a fair pay classification,
- may negotiate with the employer on several working conditions (start and end of work, break times, overtime, on-call service, part-time, etc.),
- stands up for the rights of trainees,
- ensures occupational health and safety,
- can request measures to combat racism and xenophobia in the company.

If there is no works council in the company, its workforce can establish a works council provided that at least five employees are regularly employed in the relevant company. Members of the works council enjoy special protection against dismissal. Dismissal by notice of works council members is completely prohibited. The protection against dismissal applies from the list for election up to the end of one year after termination of membership in the works council.

The works council can conclude works council agreements with the employer, which apply for all employees of the company or for certain employee groups. Works council agreements can, for example, generate general holiday principles or holiday plans for the current year, working hours, recording of working hours, break regulations or behavioral guidelines for dealing with colleagues or customers and general principles for payment entitlements, e.g. commissions, wage extra payments or annual target planning.

Trade unions

Trade unions represent the interests of employees in certain industries, for example, in the service sector, in the metal and electrical sector, and in the hospitality industry. Trade unions are opposed by employers' associations in the respective industry.

Trade unions conclude collective bargaining agreements with the employers' associations. When a company becomes a member of an employers' association, which concludes collective bargaining agreements, the collective bargaining agreements generally apply to those employees of the company who are members of the respective trade union. However, unions may also negotiate and conclude agreements with individual employers, known as in-house collective bargaining agreements; these apply to the union-member employees of the respective company. Typically, tariff-bound employers also apply the terms of collective bargaining agreements to non-union employees by contractual reference in order to realize company-uniform working conditions.

Some collective bargaining agreements have been declared generally binding by the responsible federal ministry and therefore apply to all employees in the respective industry regardless of their union membership.

If employers refuse to conclude collective bargaining agreements or to accept certain conditions in collective bargaining agreements, unions can strike the employers under certain conditions in order to enforce their demands.

Co-determination at the supervisory-board level

Employers being incorporated as e.g. a German company with limited liability (*Gesellschaft mit beschränkter Haftung,* GmbH) or a German publicly listed company (*Aktiengesellschaft*, AG) are subject to the obligation to introduce employees' co-determination at the supervisory board level if specific thresholds are achieved in terms of the number of regularly employed employees.

If a company regularly employs more than 500 employees, the German One Third Participation Act (*Drittelbeteiligungsgesetz*) requires a supervisory board to be staffed with employee representatives at a level of one third.

Pursuant to the German Co-determination Act (*Mitbestimmungsgesetz*), the supervisory board of a company employing regularly more than 2,000 employees must be composed of 50% employee representatives.

C6. Anti-corruption / bribery / money laundering / supply chain

17 Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

In German criminal law, corruption is primarily dealt with by the provisions against bribery of mandate holders (Section 108e German Criminal Code, *Strafgesetzbuch*, StGB), bribery, accepting and granting benefits, bribery (Sections 331 et seq. StGB), violation of official or private secrets (Sections 353b, 203 StGB, professional secrecy), breach of secrecy (Section 17 UWG), bribery and corruption in the healthcare sector (Sections 299a, 299b StGB), bribery of employees (Section 299 StGB), collusive tendering (Section 298 StGB), subsidy fraud (Section 264 StGB) and embezzlement (Section 266 StGB), as well as against vote buying and selling.

According to Section 334 StGB, bribery is committed if the perpetrator offers, promises or grants a public official, a European official, a person entrusted with special public service functions or a soldier in the Federal Armed Forces a benefit for that person or a third party in return for the fact that they have performed or would in future perform an official act, and thereby breached or would breach their official duties. If the offense is committed for the lawful performance of official duties, it is merely a case of granting an advantage, which is punishable by imprisonment of up to three years or a fine (Section 333 StGB). Sections 331 and 332 StGB contain parallel criminal offences for the acceptance of an advantage and taking bribes.

For the criminal liability of the office bearer etc. for bribery as well as for that of the person granting the advantage for bribery, it is essential whether an official act, which is equivalent to its omission (Section 336 StGB), is present (this is not the case with an off-duty activity), whether this is contrary to duty (the relevant laws and administrative provisions decide on this), and finally whether the advantage is given (on the basis of an agreement on injustice) in return for the expected official act, i.e. in connection with this, or only occasionally for official activity.

Under Section 299 StGB, anyone who bribes employees of a company in the course of business or who allows himself to be bribed as an employee is liable to prosecution. Sections 299a and 299b StGB cover bribery and bribery in the healthcare sector.

In taxation proceedings, operating expenses must not reduce profits if they relate to the granting of benefits and related expenses if the granting of benefits constitutes an unlawful act that constitutes a criminal offense or a law that allows punishment with a fine.

18 What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

German law does not recognize criminal law in the proper sense for associations of persons, legal entities or business enterprises. This is due to the fact that from a German legal perspective punishment always presupposes guilt, as from a German understanding criminal punishment involves a socio-ethical judgment and can only be imposed for culpable behavior, i.e. for a violation of law for which the perpetrator is personally responsible. Punishment can therefore *de lege lata* only ever be directed at individually named natural persons, not at collectives.

However, German law does contain provisions that impose adverse sanctions on associations of persons, legal entities or business enterprise for unlawful acts that occur within their sphere of responsibility. The place for this is the law of administrative offenses, the legal consequences of which, in contrast to punishment, do not express any social-ethical judgment of unworthiness. Section 30 para. 1 of the German Administrative Offences Act (*OWiG*) allows for the imposition of an association fine for criminal or administrative offenses committed by the executive bodies, management boards or shareholders authorized to represent a legal person or association of persons if they thereby violate the latter's duties or if the latter has been or was to be enriched by the offense. The administrative offense in Section 130 para. 1 OWiG (breach of supervisory duty) serves as an important connecting factor. Section 29a OWiG also permits confiscation at the expense of an association under provisions that are linked to the perpetration of an administrative offense. The attribution standard of Section 9 OWiG also permits sanctioning of management personnel. The same mechanism also exists in criminal law (Section 14 StGB).

The German government's draft bill for a law to strengthen the integrity of the economy, which was introduced in the 19th legislative period but was not implemented, provided, among other things, for the creation of an independent Association Sanctions Act (*VerSanG*) as a new principal law. It was intended to separate the punishment of associations whose purpose is economic business operations for offenses committed by their leaders from the Administrative Offenses Act and to reorganize it. It is currently unclear whether the legislative efforts will be taken up anew.

19 How is money laundering and terrorist financing regulated in your jurisdiction?

The topic of money laundering has several facets in German commercial and commercial criminal law. On the one hand, those who attempt to introduce illegally acquired assets into the legal financial and economic system are subject to criminal prosecution under Section 261 of the German Criminal Code (*Strafgesetzbuch, StGB*).

On the other hand, the German Anti-Money Laundering Act (*Geldwäschegesetz, GwG*, AMLA) imposes various notification, due diligence and documentation obligations to better prosecute those who commit money laundering offenses. The AMLA is regularly updated and amended.

Violations of obligations under the AMLA may constitute administrative offenses that can be punished by significant financial penalties (generally up to one million euros or up to twice the economic benefit derived from the violation; in specific cases even up to five million euros or up to 10% of the total turnover of the violating company in the year prior to the fine decision) as well as so-called "Naming & Shaming" sanctions (i.e. public online listing of final decisions on fines as well as the natural and legal persons responsible for the violation).

Obligations for specially obliged parties

The AMLA provides for certain obligations regarding specially obliged parties (Section 2 para. 1 AMLA) such as:

- Credit and financial institutions
- Lawyers, tax advisors and public notaries
- Auditors and certified public accountants
- Commercial traders of goods
- Real estate agents
- Insurance companies
- Organizers and brokers of games of chance
- Art brokers and art warehouses

In principle, these parties must always pay particular attention to whether there are indications of money laundering among their customers or business partners and in relation to all their transactions.

Lawyers and public notaries are (only) subject to the obligations arising from the AMLA if they carry out so-called money laundering-relevant transactions. These transactions are further described in the AMLA and inter alia include:

- Purchase and sale of real estate or commercial enterprises
- Management of money, securities and other assets
- Opening and managing of bank accounts and securities accounts
- Establishment, operation and management of (fiduciary) companies, trusts or similar structures
- Assistance regarding tax matters

Subsequently, a differentiated system applies to these money laundering-relevant transactions which balances the lawyer's duty of confidentiality with the information and reporting obligations under the AMLA. It provides for the right of lawyers to refuse to disclose information they have received in the course of a client relationship subject to the duty of confidentiality. However, the obligation to provide information remains in force if the lawyer knows that his client has used or is using the client relationship for the purpose of money laundering or terrorist financing.

A central element of the AMLA is the strengthening of the so-called risk-based approach. Above all this includes the introduction of so-called risk management. Obliged parties must have an effective risk management system in place that is "appropriate in view of the type and extent of their business activities" (Section 4 para. 1 AMLA). This includes the duty to undertake corresponding risk analyses and implement sufficient safeguards inter alia including measures aiming at:

- The management of risks,
- The identification of the business partner, the persons acting for the business partner and the beneficial owners
- Recording and retaining data on the business partner
- The appointment of a money laundering officer
- The screening of employees for reliability
- Initial and ongoing briefing of employees on typologies and methods of money laundering and terrorist financing and relevant regulations and obligations, including data protection.

For specific industries the AMLA generally provides for the obligation to appoint a money laundering officer. This inter alia applies to organizers and brokers of games of chance as well as credit and financial institutions. In addition, the competent supervisory authority may order the appointment of a money laundering officer for a company not belonging to this group if it deems this appropriate. The money laundering officer is required to ensure that the company implements the provisions of the AMLA and to monitor compliance with the measures adopted.

The AMLA further regulates the due diligence obligations of the obliged parties with regard to their customers. These are obligations that must be fulfilled by the obliged party when a business relationship is established or (under certain conditions) during or even outside of business relationships. The most important obligation is the obligation to identify the business partner and the persons acting for the business partner.

For identification purposes, the following information must be collected regarding natural persons:

- First name and surname;
- Place and date of birth;
- Nationality; and
- Residential address.

For legal entities the following information must be collected:

- Company name;
- Legal form;
- Registration number (if available);
- Address of the registered office; and
- Names of the members of the representative body or the legal representatives.

In the case of natural persons, the identification must be made on the basis of valid official documents (ID card, passport, etc.) or on the basis of another proof of identity specified by the law; in the case of legal entities, the identification must be made on the basis of an extract from the relevant register, founding documents or the obliged party's own - documented - inspection of the relevant register.

Furthermore, the beneficial owner of the business partner must be identified by the obliged party.

PDF templates for such money laundering forms are provided by the online portals of the federal states.

There are also extensive record-keeping and storage obligations, for example regarding information collected for identification purposes about the business partner, the persons acting for the business partner and beneficial owners as well as information about business relationships and transactions. The data can also be stored digitally, must generally be kept for five years and has to be destroyed latest after the expiration of ten years.

If suspicious circumstances arise that indicate possible money laundering, there is an obligation to report the respective company and the corresponding suspicion to the Financial Intelligence Unit (FIU) (reporting obligation for suspicions).

The following circumstances may give rise to or substantiate the suspicion of money laundering:

- High number of different bank accounts
- Very large cash deposits
- Transfer of very large sums (high amounts or large number of small transfers)
- Transactions with partners located in so called high-risk geographic areas
- Products or transactions that could promote anonymity
- Receipt of payments for goods or services from unknown or unrelated third parties

- Customers provide no or insufficient information for the identification or beneficial owners
- A party to the acquisition transaction acts on the basis of a proxy whose basic relationship is not identifiable

Obligations with regard to the transparency register

Already in 2017, the German electronic transparency register was introduced. The transparency register contains information on the beneficial owners of legal entities under private law, registered partnerships, trusts and certain special legal arrangements.

The transparency register can be inspected by authorities, courts and certain other public institutions for the fulfillment of their statutory duties as well as specially obliged parties for the fulfillment of their own due diligence obligations. The transparency register has been accessible to all members of the public as of 1 January 2020 (Section 23 para. 1 sent. 1 no. 3 AMLA). However, the underlying provision of the 5th EU Anti-Money Laundering Directive has been declared invalid by the ECJ with judgment of 22 November 2022 (cases C-37/20 and C-601/20). According to an interpretation of the German AMLA in conformity with EU law by the German transparency register authority (German Federal Gazette, *Bundesanzeiger Verlag*) only such members of the public that can demonstrate a so-called “legitimate interest” (i.e. condition for inspections under the 4th EU Anti-Money Laundering Directive and corresponding implementation act in Germany) can inspect the transparency register irrespective of the currently still at least formally contrary legal situation.

Legal entities under private law and registered partnerships with registered seat in Germany must obtain and maintain the relevant information on their beneficial owners, keep it up-to-date and immediately notify the German transparency register authority for entry in the transparency register (Section 20 para. 1 sent. 1 AMLA). The same obligations apply to administrators of trusts domiciled or with their registered office in Germany and to trustees of special legal arrangements domiciled or with their registered office in Germany (Section 21 para. 1 sent. 1, para. 2 AMLA).

With entry into force of the Act to Modernise the German Law on Partnerships (MoPeG) on 1 January 2024 the German civil law partnership (*GbR*) obtained the opportunity to register itself in the newly established public civil law partnership register. The registered German civil law partnership is as “registered partnership” subsequently and for the first time also obliged to notify its beneficial owners to the German transparency register. This is particularly relevant for German civil law partnerships operating in the real estate sector as well as in the context of corporate participations as the registration in the new public register is particularly mandatory for the registration of a German civil law partnership’s rights in the land register (*Grundbuch*) as well as for the registration of a German civil law partnership as shareholder in the shareholder list of a German limited liability company (*GmbH*) or as stockholder in the share register.

For foreign legal entities or registered partnerships only a so-called extraordinary, “real estate related” notification obligation might apply under certain conditions that have been significantly tightened with the entry into force of the so-called “Sanctions Enforcement Act II” (*Sanktionsdurchsetzungsgesetz II*) on 28 December 2022 (Section 20 para. 1 sent. 2, sent. 3 AMLA).

In addition to abovementioned financial and “Naming & Shaming” penalties non-compliance with notification obligations to the German transparency register bears the risk of a so-called “notification of inconsistency” (*Unstimmigkeitsmeldung*; Section 23a AMLA). These are notifications of abovementioned specially obliged parties to the German transparency register authority (German Federal Gazette; *Bundesanzeiger Verlag*) regarding a potentially incompliant transparency register situation or missing entries of beneficial owners. Such notifications of inconsistency generally lead to highly time and cost extensive administrative proceedings which may preclude or significantly delay the establishment or continuation of business relationships with specially obliged parties due to their own abovementioned due diligence obligations (incl. the identification of beneficial owners).

The Sanctions Enforcement Act II entered into force on 28 December 2022 also provided for the registration of certain real estate data in the German transparency register for entities entered as entitled legal persons in section I of the German land register (Section 19a AMLA). Whereas the registration is made by the German registry authority itself based on information provided by responsible German (land register) authorities (Section 19b AMLA) there will be a “real estate related” notification of inconsistency (*Unstimmigkeitsmeldung*) in place as of 1 January 2026 (Section 23b AMLA). This real estate data cannot be inspected by the public (Section 23 para. 1 sent. 5 AMLA).

On the level of the European Union a comprehensive “EU Anti-Money Laundering Prevention Legislative Package” is currently discussed between the European Parliament and the Council of the European Union. Initially submitted as a draft by the European Commission on 20 July 2021 the legislative package is expected to be adopted prior to elections to the European Parliament in June 2024 and will be relevant approximately as of 2026/2027. The legislative package consists of three comprehensive legislative measures (two EU regulations and one EU directive) that will have an extensive influence on current German money laundering legislation. It is not only planned to establish an EU authority for combating money laundering and terrorist financing, certain provisions regarding and obligations of specially obliged parties as well as legal entities as described above will be included in an EU regulation that will be directly applicable in all EU member states.

20 Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Yes, the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz*). The Supply Chain Due Diligence Act is applicable to companies, irrespective of their legal form, which have their main place of administration, statutory seat or a registered branch in Germany and regularly employ more than 3000 employees (as of 1 January 2023) or more than 1000 employees (as of 1 January 2024). The Supply Chain Due Diligence Act imposes rather far-reaching obligations on companies subject to the regulations of the act, which aim at ensuring that the following overarching principles are adhered to:

- the prohibition of the employment of children under the minimum permissible age;
- the prohibition of the worst forms of child labor for children under 18 years of age (slavery, prostitution, and the like);
- the prohibition of the employment of persons in forced labor;
- the prohibition of all forms of slavery and practices similar to slavery;
- the prohibition of disregarding the obligations of labor protection applicable under the applicable national law;
- the prohibition of disregard for freedom of association;
- the prohibition of unjustified discrimination in employment;
- the prohibition of withholding a fair wage (at least equal to the minimum wage established by the applicable law);
- the prohibition of causing harmful soil changes, water pollution, air pollution, harmful noise emissions and excessive water consumption, to the extent that they are likely to interfere with some more specifically defined human rights positions;
- the prohibition of unlawful eviction and the prohibition of unlawful deprivation of land and waters (land grabbing);
- the prohibition of the use of security forces when there is a threat of disregard for the prohibition of torture or the freedom of association and union, or injury to life or limb;

- the prohibition of any action not covered by the above prohibitions which is likely to violate human rights in a particularly serious manner.
    - Both in terms of scope of applicability as well as in terms of content/goals pursued by the piece of legislation, the German Supply Chain Due Diligence Act goes far beyond a standard set by comparable legislation of other European jurisdictions.
    - Non-compliance can trigger considerable sanctions.
    - It should be noted that there are plans, at the level of the European Union, to enact a Corporate Supply Chain Due Diligence Directive (CSDDD) providing for even more far-reaching rules to be implemented in all EU Member states and, in February 2022, has issued a proposal for a corresponding Directive. The proposal has been discussed between the member states and the EU Parliament issued its position on 14 December 2023. However, since the members states could not agree on the regulation in the Permanent Representatives Committee in February 2024, the decision was postponed. Although there is no new date notified, it is expected that the decision will likely not be scheduled before the next EU election in June 2024.

C7. Compliance

21 Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

According to the German Commercial Code, German companies/entities (i.e. any commercial partnership and every corporation, such as GmbH or AG) are required to prepare, approve and publish their annual accounts/annual financial statements. Regarding the specific requirements or relief from certain requirements for preparation, approval and filing/publication in relation to timing and scope of documents forming part of the annual accounts/annual financial statements, pursuant to the provision of the German Commercial Code, a distinction is made between large, medium-sized, small and micro companies on the basis of certain size criteria (i.e., balance sheet total, net turnover and average number of employees during the financial year).

As a general rule, the annual accounts/annual financial statements shall - depending on the size of the Company - comprise of the balance sheet, the profit and loss statement, the notes to the accounts (*Anhang*) and the management report/annual report (*Lagebericht*). These documents shall constitute a composite whole (annual accounts), whereby, depending on the size of the company, certain parts, such as profit and loss statement and/or the management report/annual report (*Lagebericht*) are exempted.

The annual accounts have to be drawn up within three months for medium-sized and large companies as from the end of the relevant accounting period/accounting year end (“accounting period”). The annual accounts of small companies have to be drawn up within six months as from the end of accounting period.

The annual accounts need to be approved by the competent corporate bodies, e.g. the shareholder meeting of a GmbH or in general by the Supervisory Board of an AG. Deadlines for such approval as set by the specific laws applicable to the relevant entity type must be considered. For example, the annual accounts of a GmbH must be approved by the shareholder meeting of a within eleven months (for small companies) and within eight months (for medium-sized and large companies) as of the end of the accounting period. The decision on the appropriation of annual results/distributable profits (e.g. profit distribution or profit carried forward) will be made in the annual shareholder meeting.

The annual accounts of medium-sized and large companies have to be audited by an independent or certified public accountant auditor. Consolidated accounts and the consolidated annual report have to be audited as well. If the annual accounts have to be audited, the approval by the shareholder meeting may not be given prior to the completion of the audit of the annual accounts.

In general, the annual accounts will have to be submitted for publication to the German electronic Federal Gazette (*Elektronischer Bundesanzeiger*) irrespective of the size of the company not later than twelve months following the end of the accounting period. However, there are different obligations for medium-sized and large companies as well as for small companies and for micro companies regarding which documents forming part of the annual accounts are to be submitted to the German electronic Federal Gazette (*Elektronischer Bundesanzeiger*).

22 Please detail any corporate / company secretarial annual compliance requirements?

The annual corporate compliance requirements as provided for under German law, consist of the preparation, approval and the publication of the annual accounts as described in more detail under section C 7-21before. Failure to meet applicable statutory deadlines can lead to considerable penalties/sentence or even potentially lead to the dissolution of a company or legal action against a company or its Managing Directors under statutory provisions or applicable laws.

Not filing/not publishing the annual accounts or filing the annual accounts too late can result in a fine/penalty for the company or its Managing Directors, member of the Management Board, in an amount of EUR 2,500 up to EUR 25,000 issued by the Federal Office of Justice (*Bundesamt für Justiz*). The fine/penalty can be avoided if publication of the annual accounts is made within six weeks after the receipt of the penalty letter of the Federal Office of Justice requesting the company to submit the annual accounts. No prolongation of this term is possible. If the six weeks term is not met, the Federal Office of Justice will impose further fines until the publication has been made. If the penalty/fine has been imposed against the company, it can claim damages against its Managing Directors. The company can be held liable for faults of its Managing Directors as well. The Federal Office of Justice also has the power to collect fines via compulsory enforcement proceedings.

23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

For German GmbH the German Limited Liability Company Act (*GmbHG*) provides for the requirement of an annual/ordinary shareholder meeting to resolve on the approval of the annual accounts and the appropriation of the annual results (Section 42a GmbHG). Generally, also the decision on discharge of the Managing Directors and the appointment of the auditor will be part of such annual shareholder meeting of a GmbH. Also an AG has to hold an annual General Meeting to decide on the approval of the Annual Accounts if the Management Board and the Supervisory Board have decided to leave the adoption of the annual accounts to the General Meeting, or if the Supervisory Board has not approved the annual accounts and on the allocation of the distributable profit/balance sheet profit.

24 Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.

German reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") are regulated in the German Anti-Money Laundering Act (*Geldwäschegesetz*, *GwG*, AMLA).

Certain specially obliged parties (e.g. credit institutions, financial institutions, tax advisors, auditors, public notaries, insurance companies) must identify the beneficial owner of a business partner for the fulfillment of their own due diligence obligations. For such purpose the business partner is obliged to disclose the relevant information and documents to the specially obliged party (Section 11 para. 6 AMLA).

Legal entities under private law and registered partnerships (incl. registered civil law partnerships) with registered seat in Germany must notify their beneficial owners to the German transparency register authority for entry in the transparency register (Section 20 para. 1 sent. 1 AMLA). The same obligation applies to administrators of trusts domiciled or with their registered office in Germany and to trustees of special legal arrangements domiciled or with their registered office in Germany (Section 21 para. 1 sent. 1, para. 2 AMLA).

For foreign legal entities or registered partnerships only a so-called extraordinary, "real estate related" notification obligation might apply under certain conditions (Section 20 para. 1 sent. 2, sent. 3 AMLA).

The data on the beneficial owners to be registered comprises (Section 19 para. 1 AMLA):

- First and surnames
- Date of birth
- Place of main residence
- Type and extent of the beneficial interest
- All nationalities

The registered data of the beneficial owners must correspond to respective up-to-date ID card/passport data.

In case the registered data on the beneficial owners changes (e.g. change in the composition of beneficial owners, change of place of main residence etc.) an updated notification to the German transparency register is required.

C8. Tax

25 What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Corporate Taxation:

Residence: A corporation is resident if it maintains its registered office (as determined by its articles of incorporation) or effective place of management in Germany.

Basis: Residents are taxed on worldwide income; non-residents are taxed only on German-source income. Branches are taxed in the same way as subsidiaries.

Taxable income: Corporate income tax is imposed on a company's profits, which consist of business/trading income, passive income, and capital gains. Business expenses may be deducted in computing taxable income.

Rate: The corporate income tax rate is 15% (15.825%, including the solidarity surcharge). The municipal trade tax typically ranges between 14% and 17%, and the minimum rate is 7%. The effective corporate income tax rate (including the solidarity surcharge and trade tax) typically ranges between 30% and 33%.

Surtax: A 5.5% solidarity surcharge is levied on the corporate income tax.

Alternative minimum tax: There is no alternative minimum tax.

Global minimum tax (Pillar Two): Germany has transposed into its domestic legislation the EU "Pillar Two" directive that is designed to ensure a global minimum level of taxation of 15% for multinational enterprise groups and large-scale domestic groups within the EU with annual consolidated revenue of at least EUR 750 million. The IIR (income inclusion rule) applies for accounting periods beginning after 30 December 2023 and the UTPR (sometimes referred to as the undertaxed profit(s) rule or the undertaxed payments rule) applies for accounting periods beginning after 30 December 2024. Germany also has opted to adopt a qualified domestic top-up tax (sometimes referred to as a QDMTT), applicable for accounting periods beginning after 30 December 2023.

Taxation of dividends: Dividends received by a resident corporation (from both resident and non-resident corporations) generally are 95% tax exempt; however, the exemption is not applicable if the dividends are treated as tax deductible expenses for the payer. Minimum shareholding requirements apply.

Capital gains: Capital gains generally are included in taxable income. Capital gains derived from the sale of a domestic or foreign corporate subsidiary generally are 95% tax exempt.

Losses: Losses may be carried back two years (prior to 2022, one year) and carried forward indefinitely. The maximum amount for a loss carryback is increased from EUR 1 million to EUR 10 million for losses incurred in 2020 through 2023. Losses may be offset against profits up to EUR 1 million without restriction, but only 60% of income exceeding EUR 1 million may be offset against loss carryforwards. According to the change-in-ownership rules, a direct or indirect change in ownership of more than 50% to one purchaser/related party within a five-year period results in a complete forfeiture of all tax losses (both current year losses and loss carryforwards). Loss forfeiture may be avoided in certain intragroup restructurings. In addition, losses continue to be available to the extent built-in gains in the loss company are subject to tax in Germany, or in certain cases where the historic business of the loss company is continued on an unchanged basis.

Foreign tax relief: Foreign tax paid may be credited against German tax that relates to the foreign income or deducted as a business expense. Germany typically applies the exemption system.

Participation exemption: See "Taxation of dividends" and "Capital gains," above.

Holding company regime: There is no holding company regime.

Incentives: Incentive programs are available, such as investment allowances for certain start-ups and for small and medium-sized businesses. A research and development (R&D) tax incentive of up to EUR 1 million per year, per entity/group has been introduced (reduced to EUR 500,000 for periods after 30 June 2026). In addition, attractive nonrepayable cash grants are offered, e.g., for R&D in the energy sector.

Withholding tax:

Dividends: A statutory rate of 25% (26.375%, including the solidarity surcharge) applies to dividends paid to residents; the withholding tax typically is creditable or refundable for residents. A statutory rate of 25% (26.375%, including the solidarity surcharge) applies to dividends paid to non-residents, with a possible 40% refund for non-resident companies, giving rise to an effective rate of 15.825%, unless the rate is reduced under a tax treaty. No tax is levied on dividends qualifying under the EU parent-subsidiary directive (PSD). The distributing company may apply the exemption under the directive or a reduced withholding tax rate under a treaty only if the recipient obtains a clearance certificate from the tax authorities in advance and presents the certificate before the payment is made; otherwise, a refund may be possible.

Interest: Withholding tax generally is not levied on interest paid to residents or non-residents, except for interest on publicly traded debt, interest received through a German payment agent (usually a bank), convertible bonds, and certain profit participating loans. The statutory rate is 25% (26.375%, including the solidarity surcharge). Where interest is paid to non-residents, the rate may be reduced under a tax treaty or an exemption may be available if the EU interest and royalties directive (IRD) applies.

Royalties: Withholding tax is not levied on royalties paid to residents. The withholding tax on royalties paid to a non-resident company or an individual is 15% (15.825%, including the solidarity surcharge), unless the EU IRD applies or the rate is reduced under a tax treaty. The payer may apply the exemption under the directive or a reduced withholding tax rate under a treaty only if the recipient obtains a clearance certificate from the tax authorities in advance and presents the certificate before the payment is made; otherwise, a refund may be possible.

Fees for technical services: There is no withholding tax on fees for technical services.

Branch remittance tax: There is no branch remittance tax.

Anti-avoidance rules

Transfer pricing: Business dealings between related persons must be in accordance with transactions that would have been agreed upon by independent third parties dealing at arm's length, under which the underlying principle is the normal degree of commercial prudence shown by a sound and conscientious business manager. Taxpayers are required to document all facts and evidence that support their positions. Specific transfer pricing rules apply to cross-border intragroup transfers of functions. An exit tax will be imposed on the "profit potential" that is deemed to be transferred, based on the discounted cash flow value of the subsidiary/branch before and after the restructuring. Germany generally applies the authorized OECD approach.

CbC reporting, in line with the OECD’s BEPS action 13, is required.

Interest deduction limitations: A taxpayer may immediately deduct (net) interest expense up to 30% of taxable earnings before net interest expense, tax, regular depreciation, and amortization (tax EBITDA). An EBITDA carryforward is generated if the taxpayer has net interest expense lower than 30% of the EBITDA for tax purposes, unless an exception to the interest expense limitation (see below) applies. The difference between 30% of the EBITDA and the net interest expense (excess EBITDA) may be carried forward and used in the following five years when the net interest expense exceeds 30% of current EBITDA. The limitation does not apply where: (i) the annual (net) interest burden is less than EUR 3 million; (ii) the taxpayer is not part of a group of companies; or (iii) the taxpayer can demonstrate that the equity ratio of the German borrower does not fall short by more than two percentage points of the worldwide group's equity ratio. Excess interest may be carried forward indefinitely (although change-in-ownership rules apply). Disallowed interest expense will not trigger withholding tax.

Controlled foreign companies: Passive income of subsidiaries in low or no tax jurisdictions will be attributed to a German shareholder if such shareholder and its related parties hold, directly or indirectly, more than 50% of the subsidiary. Typical passive income is income from the rental of real estate, income from licensing, or income from the lending of capital. A jurisdiction is regarded as a low tax jurisdiction if the income of the subsidiary is subject to an effective tax rate of less than 15% (25% for periods before 2024). Credits and refunds at the shareholder level are taken into account when determining whether the effective tax rate falls below the 15% threshold. Credit for tax paid on attributed income can be granted upon the application of the taxpayer.

Anti-hybrid rules: General anti-hybrid rules are in place, which are based on the EU anti-tax avoidance directive (ATAD 2). Additional anti-hybrid rules exist in connection with dividends received (linking rules) and certain “double-dip” structures involving German *Organschaft* entities (dual consolidated loss rules) and German partnerships.

Economic substance requirements: Based on the amended anti-treaty shopping rule, relief from withholding tax under a treaty or the EU PSD or IRD is not available to a foreign company if, and to the extent that:

- Its shareholders or persons that are beneficiaries under the applicable statute would not be entitled to the same relief under the same treaty or the relevant EU directive had they been direct recipients of the income ("shareholder test"); and
- There is no material link or connection between the income generating source and the economic activity of the receiving corporation, partnership, or other taxable entity; the mere realization of the income, the distribution to shareholders or persons that are beneficiaries under the applicable statute, and activities that lack adequate physical substance do not qualify as economic activity ("activity test").

If the conditions of both tests are fulfilled, treaty abuse is presumed, and the presumption of treaty abuse can only be rebutted if and to the extent that the conditions of the "main purpose exception" or the "listed entity exception" are fulfilled. The rule applies in addition to limitation on benefits clauses and general anti-avoidance rules, and the burden of proof for meeting the conditions lies with the foreign shareholder.

Disclosure requirements: A taxpayer generally must disclose all facts relevant for taxation, especially regarding transactions with foreign related parties.

Mandatory disclosure rules for certain types of restructurings are in place, which are based on DAC 6.

Exit tax: The tax law allows the taxation of unrealized capital gains when Germany's right to tax the gains on the sale or use of assets is restricted or excluded as a result of a transaction (e.g., if a taxpayer transfers its tax residence to a foreign jurisdiction or if an asset is transferred out of Germany). The exit tax is imposed on the "profit potential" that is deemed to be transferred out of Germany, usually measured by performing a hypothetical arm's length analysis. Valuation can be based on the capitalized earnings approach or the discounted cash flow method; comprehensive valuation of the respective "business function" instead of an asset-by-asset valuation may be required.

General anti-avoidance rule: Germany has a long-standing general anti-avoidance rule (GAAR), under which taxpayers are not allowed to circumvent the tax law by abusing legal tax planning opportunities. Abuse is presumed when the taxpayer chooses an inappropriate legal structure that, in comparison with an appropriate structure, leads to a tax advantage not intended by the law. The presumption may be rebutted by demonstrating that the particular structure has been chosen for non-tax reasons, provided such reasons are relevant considering all the facts and circumstances. Specific anti-avoidance rules apply for payments to recipients that are resident in a jurisdiction that is on the EU "black list".

Other: The deductibility of royalties and similar payments made to foreign related parties is restricted if such payments are subject to a non-OECD compliant preferential tax regime (i.e., an intellectual property regime not based on the "nexus approach" as described in OECD BEPS action 5) and taxed at an effective tax rate of less than 15%.

Value added tax:

Taxable transactions: VAT is levied on the sale of goods and the provision of services.

Rates: The standard rate is 19%, with reduced rates of 7% and 0% applying to specified transactions. Certain transactions are exempt.

Registration: German entrepreneurs generally must register for VAT purposes. However, if turnover did not exceed EUR 22,000 in the previous calendar year and is estimated not to exceed EUR 50,000 in the current calendar year, German entrepreneurs can opt for the special scheme for small businesses, so that no VAT is imposed by the German tax authorities. Non-residents that make taxable supplies of goods or services in Germany also must register.

Other taxes on corporations:

Social security contributions: Employed individuals are required to make a contribution for pension, health, nursing care, and unemployment insurance. The employer generally is required to bear 50% of the total contribution. Additional charges (e.g., statutory accident insurance, insolvency fund levy, etc.) may apply.

Payroll tax: There is no payroll tax, but the employer is required to withhold wage tax on a monthly basis from an employee's income and remit it to the tax authorities.

Wage tax certificates must be transmitted electronically and be authenticated by the employer.

Capital duty: There is no capital duty.

Real property tax: Tax is levied by the municipality in which real estate is located. The rate consists of two elements: a fixed rate depending on how the real estate is used and a rate depending on the municipality. The tax basis is the tax value of the property, calculated based on specified valuation principles.

Municipal trade tax: This tax is an income tax levied by municipalities at a minimum rate of 7%. All businesses with commercial activities carried out through a subsidiary or a non-resident’s commercial permanent establishment in Germany are liable for trade tax. Corporations are deemed to carry on commercial enterprises (trade or business), regardless of their actual activities. Individuals, alone or in partnerships, are not liable for trade tax on professional or other independent services unless the activities are deemed to be commercial under the income tax law. The municipal trade tax rate varies, but averages between 14% and 17% of income. The trade tax is based on taxable income as calculated for corporate income tax purposes, with several income adjustments.

26 Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

National and international subsidy programs span a diverse spectrum, in particular

- Research & Development & Innovation (R&D&I)
- Investments in environment, energy or sustainability measures
- Investments in sites or production facilities

Eligible areas include digitalization, technology, energy efficiency, site expansion and many more.

The subsidy/funding instruments, which are applied individually for each program, are as broad as the areas covered by the programs. This means that funding for projects can be provided in various ways, such as for example, but not limited to:

- Non-repayable grants
- Public grants that do not have to be repaid if used properly
- R&D tax incentives - provided certain conditions are met, companies and institutions of all types and sizes are eligible for tax incentives for their R&D projects (also see statements with respect to tax matters hereinabove)
- Loans at preferential interest rates
- Loans granted by specialized development banks (in some cases extended by commercial banks, "*Hausbankprinzip*"), whose loan interest rate is significantly lower than the usual market interest rate

These subsidies are complemented by public guarantees for the acquisition of bank loans and public equity capital to increase the equity ratio.

Grants and subsidies often come with specific prerequisites, terms and conditions, which can relate to the specific usage of the funds received, limitations with respect to the goods acquired, the need for maintaining a specific number of employees, limitations on dividend distributions and other return of funds to shareholder, etc.

Apart from “regular” grants and subsidies as depicted hereinabove, additional support and aid programs are made available in specific constellations (and generally after consultation with the competent European Union authorities in order to avoid a conflict with EU subsidy rules). Recent examples include specific programs initiated for companies/industries affected by the Covid-19 pandemic as well as recent dramatic increases of energy (production) cost.

As regards employees, Germany has a system of short time work allowances. The employment agency (*Agentur für Arbeit*) pays the short-time work allowance as partial compensation for a loss of earnings caused by a temporary cut in working hours. This relieves employers from employment costs. Companies can continue to employ their employees even in the event of a loss of orders. In other words, the short-time work allowance helps to prevent job losses. The short time work allowances are subject to certain prerequisites, that must be met, as well as terms and conditions. In times of the Pandemic and, these have been subject to repeated changes.

It must be noted that wrongful applications for grants and subsidies can trigger criminal liability, in particular criminal liability pursuant to Section 264 of the German Criminal Code (subsidy fraud). Subsidy fraud is an abstract endangerment offense, so that it is sufficient for the offense to be committed if the applicant provides incorrect or incomplete information when applying for the subsidy (e.g. the reimbursement of short-time work allowance). The occurrence of pecuniary loss is not a prerequisite for the actions to be qualified as a criminal offense. In contrast to "classic" fraud, on the subjective side it is already sufficient for criminal liability for subsidy fraud if the potential perpetrator acts recklessly, i.e., grossly negligently.

27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

For tax matters (withholding taxes, exit taxes), please refer to the section dealing with such matters.

The law of the European Union (EU) lays down as a rule the freedom from restrictions on the movement of capital both in relations between member states and in relations with third countries. Accordingly, since 2001, the German Foreign Trade and Payments Act (AWG) no longer permits any special restrictions on capital movements for the import and export of capital. General requirements under corporate law are not considered to be a limitation of the free movement of capital.

As a special instrument of state takeover control, German foreign trade regulations (the Foreign Trade and Payments Act, *Außenwirtschaftsgesetz* - AWG and the *Außenwirtschaftsverordnung* - AWV), which were repeatedly and most recently extensively amended gives the Federal Ministry of Economics and Technology (*BMWi*) powers of examination and intervention in exceptional cases with regard to transactions on the basis of which non-European investors gain a decisive influence on companies domiciled in Germany. Whether the investors are sovereign wealth funds or private companies is just as irrelevant as their legal form.

Embargoes and sanctions enacted by the European Union, Germany or 3rd countries have to be taken into consideration and made lead to limitations on inflow or outflow of capital to and from Germany.

Also see chapter dealing with foreign direct investment restrictions, controls or requirements.

28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Transfer tax: A real estate transfer tax (RETT) of 3.5% to 6.5% of the sales price/value of transferred German real estate applies. RETT also applies if 90% or more of the shares in a real estate-owning corporation are directly or indirectly transferred to one or more new owners within a period of 10 years or if 90% or more of the shares are combined for the first time at the level of a (new) shareholder, or if 90% or more of the interests in a real estate-owning partnership are directly or indirectly transferred to new partners within a 10-year period. The rate depends on the federal state (*Bundesland*) in which the real estate is located. Exceptions may apply for certain intragroup restructurings.

Stamp duty: There is no stamp duty.

C9. M&A

29 Are there any public takeover rules?

Yes. The relevant rules are set out in the German Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*, WpÜG). The German Takeover Act entered into force on 1 January 2002 and has repeatedly been amended ever since, in particular in view of the (implementation of the) EU Takeover Directive (in 2006). In terms of scope, the Act applies to all public bids targeted at companies in the relevant legal forms (AG, SE, KGaA) having its registered office in Germany or in another member state, provided that the shares of the target are admitted for trading on an organized market in Germany. Content-wise, the Takeover Act does not only regulate takeover bids, but also regulates other publicly made bids by means of which the bidder seeks to acquire only part of the shares or intends to consolidate an already existing controlling position. It also applies to, by way of example, convertible bonds.

30 Is there a merger control regime and is it mandatory / how does it broadly work?

There is a merger control regime which is mandatory to the extent the prerequisites for its applicability are fulfilled. The relevant regulations are found in Sections 35 to 43 of the German Act against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB). The responsible authority is the German Federal Cartel Office (*Bundeskartellamt*). Events triggering the relevant rules set for being considered "concentrations" in the sense and meaning of Section 37 GWB include

- the acquisition of (direct or indirect) control over another undertaking or parts of it by one or several undertakings;
- the acquisition of all or substantial part of the assets of another undertaking;
- the acquisition of shares in a company's capital or voting rights resulting in an overall shareholding reaching or exceeding 25% or 50% respectively;
- any other combination of undertakings enabling one or several undertakings to directly or indirectly exert a competitively significant influence on another undertaking.

The German concept of control is very similar to the concept of control pursuant to the EU merger control regime.

A concentration (as defined herein above) is subject to German merger control, if the prerequisites set out in either of the following alternative provisions are fulfilled:

- combined worldwide turnover of all undertakings participating in the concentration in the last completed financial year preceding the transaction exceeds EUR 500 million + the turnover of at least one undertaking participating in the concentration exceeds EUR 50 million in Germany + the turnover of at least one other undertaking participating in the concentration exceeds EUR 17,5 million in Germany, or
- combined worldwide turnover of all undertakings participating in the concentration in the last completed financial year preceding the transaction exceeds EUR 500 million + the turnover of at least one undertaking participating in the concentration exceeds EUR 50 million in Germany + the amount of the consideration payable for the Transaction exceeds EUR 400 million + the undertaking to be acquired is significantly active in Germany.

Further details cannot be described here.

31 Is there an obligation to negotiate in good faith?

Within perimeter of the general principle of good faith and equity (Treu und Glauben): yes.

32 What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

Asset Deal:

A provision of particular importance in German law, which must be observed in case of restructuring and acquisitions, is Section 613a German Civil Code. This provision applies to transfers of businesses or parts thereof.

If such an economic unit is transferred from a company (seller) to another company (purchaser), Section 613 a German Civil Code stipulates that the employment relationships of the affected employees are automatically, i. e. by operation of law, transferred to the purchaser. Any agreement, which aims to obstruct this legal consequence, is ineffective.

Furthermore, it should be noted that purchaser and seller must inform the employees, who are affected by the transfer of business, about the reason of the transfer and other relevant circumstances (e.g. point of time, legal consequences etc.) in accordance with Section 613 a para. 5 German Civil Code in due form prior to the transfer.

Generally, the employees can object to the transfer of their employment relationship in writing within a period of one month; this period starts upon information about the transfer. If they object, employment with the seller continues. As the employees can also object later if they are not or not properly informed about the transfer, it is important to ensure proper information in order to avoid an unpleasant surprise by objecting employees at a later date.

Share Deal:

There are no specific employee rights/protections associated with the share deal. The employment relationship between employer and employee is not affected by the transfer of the employer (share deal) and will continue unchanged.

C10. Foreign direct investment

33 Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

In order to avoid security risks or to prevent a drain of know-how deemed particularly sensitive, the Federal Ministry for Economic Affairs and Climate Protection (BMWK) may review the acquisition of domestic companies by foreign buyers. Depending on the relevant sector the domestic company operates in and the amount of shares/ assets to be purchased, acquisitions by any foreign acquirer or by non-EU/non-EFTA acquirers can be subject to such a review.

The basis for these reviews are the Foreign Trade and Payments Act (AWG) and the Foreign Trade and Payments Ordinance (AWV). The regulations allow the BMWK to assess whether there will be (i) a likely effect on the public order or security of the Federal Republic of Germany, of another Member State of the European Union or in relation to projects or programs of Union interest, or (ii) whether essential security interests of the Federal Republic of Germany might likely be impaired. The Catalogue of sectors subject to a sector-specific or a cross-sectoral review procedure has been regularly extended in the past and is mainly divided into defense-related sectors in case of the former and a broad range of sectors that are considered particularly critical in case of the latter.

Depending on the relevant sector, the threshold of voting rights/assets to be acquired, which triggers a review procedure, is 10% or 20%. In the case of an ex-officio review of acquisitions of domestic companies operating in any other sector, the relevant threshold is 25%.

Non-compliance may result in the acquisition being deemed invalid and prohibited. In principle, authorities may even order a reversal of unauthorized transactions. Other sanctions, e. g. if specific business relevant information is provided to the acquirer prior to the authority´s decision, may include monetary as well as personal penalties (fines and/or imprisonment). Early consideration of the underlying provisions is therefore indispensable.

34 Does your jurisdiction have any exchange control requirements?

See chapter dealing with impediments/tax charges that typically apply to the inflow or outflow of capital to and from Germany.

D. Entity closure

35 What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

In general, German law knows two basic types of liquidation, mandatory and voluntary/solvent liquidation.

A mandatory liquidation takes place in the event of – inter alia – (i) opening of insolvency proceedings, (ii) at the order of the Court or the commercial register and otherwise as determined by law.

A voluntary/solvent liquidation is initiated by the company or its shareholder(s) and is designed for companies that have ceased or want to cease their business activities and where the shareholder(s) believe that it makes no sense to keep an entity alive that is not doing business anymore or to keep the company as dormant or shelf company. The intention to liquidate the company can also be based on a (global) post-acquisition/merger restructuring/integration (e.g. entity reduction sale/transfer of the business followed by a company liquidation).

In the event of a voluntary liquidation, the shareholders of a company (AG, GmbH, KG etc.) resolve to close down/wind-up its operations in their own discretion. In principle, a liquidation proceeds in a similar way for all types of companies - namely in three phases: dissolution, liquidation proceedings and termination/deletion of the company. First, the dissolution/liquidation of the company has to be resolved by the shareholders. The resolution on the dissolution/liquidation a company has to be registered with the commercial register. The termination of the company is not yet complete with the dissolution. Rather, the liquidation phase follows the resolution to liquidate the company, which essentially pursues the purpose of satisfying creditors' claims, distributing remaining assets among shareholders and deleting the company from the commercial register. Once the necessary liquidation measures have been completed, the liquidation is terminated. A final account must now be drawn up, and the termination of the liquidation can be filed for registration with the commercial register. With the deletion from the commercial register, the company ceases to exist. How exactly a liquidation is carried out depends very much on the legal form of the company. During the liquidation period, the company in the legal form of a GmbH or AG is no longer represented by managing directors/members of the board of directors but by liquidators, which are often the same individuals who acted as Managing Directors/members of the Management Board beforehand. A partnership like a KG is represented by shareholders acting as liquidators. The liquidators are obliged to close-down/wind-up the company's business, collect all outstanding receivables and settle all claims of the company's creditors as well as transforming all assets of the company into by selling and transferring the business as a whole or of operable parts thereof on an asset by asset basis. All transactions that serve the liquidation may be carried out. The creditors of a corporation, like a GmbH or AG have to be given public notice about the closure of the company, including a call to creditors, so as to enable them to collect their claims by respective publication of the liquidation with the German electronic Federal Gazette (*Bundesanzeiger*). After all creditors' claims have been settled (including those of the fiscal authorities), any remaining assets/liquidation surplus are distributed to the shareholders. However, such distribution can take place at the earliest one year after publication of the liquidation with the German Electronic Federal Gazette (restrictive year/one year waiting period). After distribution of the liquidation proceeds to the shareholders, the liquidators must file the termination of the liquidation and the deletion of the company with the commercial register. The fiscal authorities have to consent to the deletion of the company. Finally, the company will be deleted from the commercial register and thus ceases to exist.

In any event, keeping in mind the one-year period mentioned above (restrictive year), the liquidation process will take at least 1 ½ years.

Under German law there is no fast-track liquidation process applicable. However, in case of a group of companies, another option would be to merge entities, i.e. merge the entity, that shall be dissolved into another group entity by means of which all assets and liabilities will be transferred to the absorbing entity way universal succession by operation of law upon registration of the merger with the commercial register. This might be attractive option since the merger of subsidiaries is the quicker and smoother way to eliminate unwanted companies compared to their liquidation.

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