



First published on Friday, 22 June 2012

Litigation



Germany

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Overview

1. Court system

Describe the general organisation of the court system for civil litigation.

Civil disputes (in excess of €5,000) are litigated in the regional courts as the courts of first instance. Regional courts are organised in chambers, with specialised chambers for certain types of commercial matters (eg, commercial disputes between corporations, corporate law disputes, unfair competition matters). Special courts exist for labour, criminal, tax, administrative and social security matters. District court judgments may be appealed to the higher regional court. Both regional and higher regional courts are state courts. A second level of appeal, limited to errors of law, is available, under certain conditions, to the German Federal High Court of Justice, a federal court. Where constitutional rights are violated, an extraordinary constitutional complaint to the Federal Constitutional Court may be available. Pursuant to the provisions of EU law, German courts have the right, and in some cases the duty, to refer matters of EU law to the European Court of Justice (ECJ).

The German constitution provides for a strict separation of powers; accordingly, courts are independent from the legislative and executive branches of government. Judges are generally chosen and appointed by the courts. Constitutional Court judges are elected by representatives of Parliament.

German law, as a civil law system, does not recognise the doctrine of *stare decisis*. Thus, as a matter of law, a court is not bound by its own earlier decisions or earlier decisions of other courts. In practice, however, lower courts generally follow the decisions of the courts situated above them in the court hierarchy. In addition, courts are often persuaded by prior decisions from other courts outside their own formal hierarchy.

There are no juries in Germany.

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2. The legal profession

Describe the general organisation of the legal profession.

Admission as a lawyer is based on a two-step legal education: the study of law at university level (as evidenced by a first comprehensive exam administered on a statewide basis) and a two-year practical, clerkship type of training, which ends with a second comprehensive



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exam (again administered on a statewide basis). After passing the two exams, German lawyers are generally qualified to work as judges, attorneys-at-law, prosecutors or in any other legal function.

There is only one type of attorney-at-law; Germany does not distinguish between barristers and solicitors. Every German-qualified attorney-at-law is admitted to appear before all German district and appeals courts, as well as the Federal Constitutional Court. By contrast, only a very limited number of specially designated attorneys-at-law are allowed to appear before the Federal Court of Justice.

There are special rules for the admission of foreign lawyers coming from an EU member state, predicated either on a certain period of practice in Germany or the passing of a special exam. Generally, non-EU lawyers are not eligible to appear before German courts.

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3. General

Give a brief overview of the political and social background as it relates to civil litigation.

Germany has a long tradition of civil litigation that has evolved over more than a century without major changes. Thus, Germans generally have a high degree of trust and confidence in the court system. Currently, as regards civil litigation in general, there are no significant reform projects underway. The caseload of German court dockets is heavy. Nevertheless, the German court system can be regarded as relatively efficient.

German society is generally not considered litigious as far as commercial matters are concerned, although in the last few years, particularly in the aftermath of the financial crisis, Germany – like many other countries – has experienced an uptick in litigation. The typical pro-plaintiff attributes of certain other legal systems, such as pretrial discovery, class actions and punitive damages, are not available in Germany. As a consequence, apart from some limited exceptions (eg, regarding activist shareholder litigation against publicly listed companies, cartel follow-on damages claims), there are no typical professional or activist plaintiffs.

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Jurisdiction

4. Jurisdiction and venue

What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

For civil and commercial matters, the regional courts have general jurisdiction. For small claims (up to €5,000), the district courts have jurisdiction. Within the district courts, certain commercial matters are heard by specialised chambers.

The venue is determined either by the Brussels I Regulation (EU Regulation 44/2001) or the German Code of Civil Procedure. EU law is prevailing in cross-border litigation where the defendant is domiciled in a member state of the European Union. The German Code of Civil Procedure is applicable when both parties are domiciled in Germany or the defendant is domiciled outside the European Union.

Under both sets of rules, the venue is generally proper at the place of residence or seat of

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the defendant. In addition, the proper venue is, for example, the place of the performance of a contract and at the place where a tort occurred. Generally, the plaintiff can choose among several available venues.

Generally, the parties to commercial matters can agree on the venue both under German and EU law; this does not apply where at least one party is a consumer.

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5. Forum shopping

Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

Unlike certain common law jurisdictions, the German rules of civil procedure do not take a particularly expansive view on personal jurisdiction over non-German defendants. Jurisdiction is determined by the Brussels I Regulation (EU Regulation 44/2001), where applicable, or the German Code of Civil Procedure, see question 4. Nevertheless, in cross-border business transactions, particularly those with a German nexus, parties often agree on German law and German jurisdiction. Also, in certain (often tort-related) areas Germany as a court venue is considered attractive compared to other jurisdictions. This applies for instance to patent litigation due to the low cost and comparatively high speed of the patent litigation process in Germany. German courts have also repeatedly been chosen by plaintiffs to bring follow-on cartel damages actions.

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6. Pendency in another forum

How will a court treat a request to hear a dispute that is already pending before another forum?

Where a dispute is already pending before a court in Germany, another court seized of the same matter should dismiss it.

Where a dispute is already pending before a court of another EU member state, the German court must stay its proceedings until the court first seized has determined the question of its jurisdiction (article 27 Brussels I Regulation). Where a dispute is already pending before a court outside the EU, the German court will dismiss the claim only if a decision rendered by the non-EU court is recognisable in Germany.

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7. Deference to arbitration

How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate?

German courts defer to arbitration agreements, provided that a party to the dispute invokes the relevant arbitration agreement prior to the oral hearing before the state court. German law provides for a special procedure before state courts where a party may file a request to decide whether a valid arbitration agreement exists for the dispute at hand.

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How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

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What standard of proof applies in civil litigation? Are there different standards for different issues?

May courts in your country review arbitral awards on jurisdiction?

German law provides for very limited review of arbitral awards. Grounds for review include the invalidity of the arbitration agreement, and thus, the lack of jurisdiction of the arbitral tribunal.

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9. Anti-suit injunctions

Are anti-suit injunctions available?

There are no specific provisions on anti-suit injunctions. Thus, the general rules on injunctive relief would apply (see questions 18 and 19). However, in Germany there has never been a tradition of anti-suit injunctions. The European Court of Justice (ECJ) decided in recent years that anti-suit injunctions in the context of both litigation and arbitration are impermissible when directed against court proceedings in another member state (ECJ *West Tankers, Turner*). According to the ECJ, an anti-suit injunction would run counter to the trust that the member states accord one another's legal systems, which constitutes the basis of the system under the Brussels Regulation. If the mere reference to the existence of an arbitration agreement or jurisdiction clause between the parties were sufficient to justify ordering an anti-suit injunction against a member state's court, the party arguing that the arbitration agreement or jurisdiction clause is void, inoperative or incapable of being performed would thus be barred from access to the Member State's court and thereby from a judicial protection to which it is entitled under the Brussels Regulation.

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10. Sovereign immunity

Which entities are immune from being sued in your jurisdiction? In what circumstances?

German law follows the established rules in public international law. Another sovereign may be sued for *acta iure gestionis* but not for *acta iure imperii*. Some persons are immune to being sued due to their diplomatic status. Customary international law is part of the German legal order by virtue of article 25 of the German Constitution.

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Procedure

11. Commencement and conduct of proceedings in general

How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Proceedings generally commenced by the plaintiff filing a detailed statement of claim (see question 12 regarding pleading standards). The statement of claim is filed with the court of first instance, and the court effects service upon the defendant(s). The defendant is generally required to file a detailed statement of defence within a period of four weeks, which may be extended, for example in more complex cases. Where the claim is for the payment of a specific amount of money, plaintiffs may choose a payment order proceeding, which may later turn into a regular court proceeding (see question 37).

After the exchange of the statement of claim and the statement of defence, the court may

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42. Costs

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44. Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

45. Third-party funding

Is third-party funding allowed in your jurisdiction?

either order the exchange of further detailed briefs, or it may hold an oral hearing.

As a general matter, even though it is upon the parties to present the relevant facts and evidence, German courts are required to take a fairly active part in furthering the proceedings. For instance, it is upon the court to decide which witnesses to summon or which expert to appoint. The production of documents is rarely ordered.

The questioning of witnesses and experts is generally led by the court. In addition, German courts are required at all stages of the proceedings to be mindful of any options for amicable settlement. German judges often take a very proactive approach to settling cases, which may be unknown in other jurisdictions.

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12. Statement of claim

What are the requirements for filing a claim? What is the pleading standard?

German law follows stringent pleading standards. Notice pleading is not sufficient. A statement of claim has to provide all the facts supporting the relief requested and the evidence relied on by the plaintiff on an allegation-by-allegation basis. Thus, a party essentially needs to know all essential facts of the case before it starts litigation. There is no pretrial discovery available in Germany. Also, the statement of claim must contain a specific request for relief. Where the payment of money is sought, the request for relief must generally state the exact amount sought.

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13. Statement of defence

What are the requirements for answering claims? What is the pleading standard?

The pleading standard for answering a statement of claim is substantially the same as the standard governing the statement of claim. Thus, the defendant needs to specify its factual allegations and defences as much as reasonably possible, including evidence relied on by the defendant on an allegation-by-allegation basis.

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14. Further briefs and submissions

What are the rules regarding further briefs and submissions?

The pleading standard for further briefs and submissions is substantially the same as for statements of claim and statements of defence. The claimant may amend its requests for relief if the respondent agrees or if the court considers the amendment to be reasonable. The claimant may freely withdraw a claim until the start of the oral hearing; at a later stage, withdrawal is only permissible with consent of the defendant. Additional or amended factual assertions are subject to the timetable governing the proceedings. Parties are generally required to present all facts and evidence as early as possible. Failure to do so, unless properly excused, may lead to the preclusion of later submissions or allegations. Further submissions regarding the law and the legal evaluation of the case are permissible at any time and are not subject to time bars.

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15. Publicity

46. Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

Jurisdictions

Brazil



LO Baptista, Schmidt, Valois, Miranda, Ferreira, Agel



England & Wales

Herbert Smith Freehills LLP



Germany

Cleary Gottlieb Steen & Hamilton LLP



Lebanon

Obeid Law Firm



Lithuania

Motieka & Audzevičius



Mexico

Von Wobeser y Sierra, S.C.



Nigeria

Sofunde Osakwe Ogundipe & Belgore



Poland

Łaszczuk & Partners



Russia

Clifford Chance CIS



Singapore

WongPartnership LLP



Spain

Garrigues



Switzerland

Schellenberg Wittmer



Turkey

Coşar Avukatlık Bürosu



Ukraine

EnGarde

To what degree are civil proceedings made public?

Civil court filings are not generally open to the public. Instead, in order to be allowed to inspect a court file, a specific legal interest in the inspection must be demonstrated. By contrast, oral hearings are generally open to the public, except for certain situations, for example, to protect privacy or business secrets. However, given the strong emphasis on detailed and substantiated written submissions, cases are often not discussed in detail during an oral hearing. Specifically, there is no comprehensive oral presentation of the case as is common in the Anglo-American procedural tradition. TV cameras and the taking of pictures or the use of recording devices is not allowed. Judgments are pronounced in the open courtroom.

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Pretrial settlement and ADR

16. Advice and settlement proposals

Will a court render (interim) assessments about any factual or legal issues in dispute?

What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

After the exchange of initial briefs, and before the start of the first oral hearing, courts are generally required to explore settlement options with the parties. Also, during the further course of the proceedings, German courts are required to be continuously mindful of options to amicably resolve the dispute among the parties.

It is common for German courts to render interim oral assessments of the parties' strengths and weaknesses and to discuss those with the parties. Often, these discussions facilitate settlement.

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17. Mediation

Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

There is no mandatory mediation or ADR for general commercial matters in Germany. The parties are free to engage in mediation or other forms of ADR before or during litigation. Parties should indicate whether some form of ADR has already been conducted when filing the claim. Courts are generally required to conduct a conciliation hearing at the first trial hearing.

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Interim relief

18. Forms of interim relief

What are the forms of emergency or interim relief?

German law provides for two types of emergency or interim relief: seizure and injunctions. In a seizure proceeding, the petitioner obtains the interim seizure of assets or in rare cases

the interim arrest of persons. The seizure proceeding is available where there are strong reasons to believe that assets of the opposing party may not be available at a later stage for enforcement purposes once the regular litigation is concluded. Injunctions are available to provide an interim regulation of a disputed issue, such as the prohibition of a certain act (eg, violation of an anti-competition covenant or publication of libellous statements).

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19. Obtaining relief

What must a petitioner show to obtain interim relief?

To obtain a seizure, the petitioner needs to demonstrate by a preponderance of the evidence that it has a certain claim for the payment of money against the respondent, and that there are specific reasons to believe that without a seizure, the petitioner would not be able to enforce a later judgment against the assets of the respondent.

To obtain an injunction, the petitioner must demonstrate by a preponderance of the evidence that the underlying claim exists and that there is an urgent need to act because otherwise the respective claim of the petitioner may be thwarted or its enforcement significantly hampered.

It should be noted that the petitioner is strictly liable for damages as a result of a seizure or injunction should it turn out later that the underlying claim was unfounded.

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Decisions

20. Types of decisions

What types of decisions (other than interim relief) may a court render in civil matters?

The standard decision to be rendered by a German court in civil matters is a final and binding judgment. German law also provides for partial judgments, which are available for instance where a party brings multiple claims, and one claim is already ripe for decision. Also, a court may issue an interim judgment on the issue of liability, with the determination of quantum to be left to the final judgment. German law further provides for provisional judgments. These are particularly relevant in documentary proceedings; see question 37.

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21. Timing of decisions

At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

The court is required to render a final and binding decision as soon as the case is ripe for decision. This may be as early as after the exchange of written briefs if, for example, the court finds that under the required standards of substantiation, the plaintiff has failed to state a claim. Such decision would be similar to a dismissal upon a motion to dismiss or a summary judgment, even though these motions are not available as technical instruments under German law. In the alternative, a case may be ripe for decision only after extensive taking of evidence. In all situations, it is upon the court to determine whether the case is ripe for decision or what needs to be done in order to get to ripeness. For instance, the parties do not have the right to have further witnesses or experts heard if the court

determines that this is not relevant for the case and its outcome any more.

It should be mentioned, however, that different judges take different practical approaches. Some are very meticulous in determining the sufficiency of a plaintiff's pleadings to state a claim, and to determine ripeness for decision at all stages of the proceedings. Others are more willing to engage in the taking of evidence even without strictly verifying whether the plaintiff has stated a case or whether the case would otherwise already be ripe for decision.

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22. Default judgment

Under which circumstances will a default judgment be rendered?

A default judgment may be rendered where the plaintiff has stated a claim with sufficient substantiation, and the defendant fails to appear at the oral hearing (or fails to be represented by an attorney-at-law admitted in front of German courts). Likewise, a default judgment against the plaintiff may be entered where the plaintiff fails to appear at the oral hearing. A default judgment is enforceable without the requirement to post collateral.

The party against whom a default judgment was entered may oppose the default judgment within a period of two weeks. In such case, the proceedings need to be reopened. However, the defaulting party will need to bear the costs associated with the default judgment.

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23. Duration of proceedings

How long does it typically take a court of first instance to render a decision?

It is difficult to make generalised statements on the typical duration of a commercial case in the first instance. The duration depends on the complexity of the case, how focused (or unfocused) the parties conduct it, how loaded the court's docket is and the personal approach of judges in handling and disposing of cases. With these provisos, the average duration of court proceedings in the first instance is approximately one year, but cases may also take significantly longer.

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Parties

24. Third parties – joinder, third-party notice, intervenors

How can third parties become involved in proceedings?

German law provides for several means to involve third parties in a dispute. Plaintiff may sue several parties as co-defendants. A defendant may bring a counterclaim that is directed not only against the plaintiff, but also against a third party, if the third party consents or the court finds it reasonable to include the third party in the dispute. In addition, both the plaintiff and the defendant may give a third party formal notice of the dispute where one party is concerned that if it loses the present proceedings, it may have recourse claims against the third party (or may be subject to recourse claims by a third party). For example, this is frequently done by a defendant contractor who may have a recourse claim against a supplier if the plaintiff is successful. Such formal notice enables the third party to join the proceedings as intervenor, and support either the plaintiff or the defendant. The contents and the result of the proceedings will then be binding between the party giving the third-

party notice and the recipient of such notice, should there later be a dispute among them on the topics that were subjects of the initial proceedings. Thus, in the contractor–supplier context, where the court finds that a product sold by the defendant contractor to the plaintiff was defective, such finding would be binding in a recourse proceeding brought by the contractor against its supplier. Finally, a third party can act as intervenor for the plaintiff or the defendant if it has a legal interest to do so.

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Evidence

25. Taking and adducing evidence

Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

It is each party's obligation to offer the evidence it wishes to rely on. The court generally will not consider facts and evidence not offered by one of the parties. Among the evidence offered, the court will choose the items that it deems relevant to the outcome of the case. Thus, unlike in the Anglo-American system, the court will not necessarily hear all the witnesses that a party has offered, but only the witnesses that the court chooses to summon.

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26. Disclosure

Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

As a general principle, no party is obliged to “hand over the weapons” that the other side needs to prove its case. Thus, generally a party relying on certain facts must produce the evidence to support such facts. A party may, however, request that the court order the other party (or, in limited circumstances, a third party) to produce specific documents that are relevant to the outcome of the case. While German courts take different approaches in applying the document production provisions of German law (some are more generous, most are very restrictive), there is no general pretrial discovery procedure. Specifically, a party may not seek documents that are merely likely to yield relevant evidence (no fishing expeditions).

If evidence cannot be produced, disputed facts must generally be considered not proven and thus non-existent. However, facts may not only be proven by direct but also by circumstantial evidence. Furthermore, in view of substantiated factual submissions by one party, the other party may not necessarily rely on blanket denials, but may be required to substantiate its denials. Parties are obligated to tell the truth.

In specific circumstances, German courts recognise a reversal of the burden of proof or at least certain facilitations if rendering proof of such facts is typically overly burdensome or impossible for the party carrying the burden of proof.

Finally, where a court orders a party to produce documents and the party fails to do so, the court can draw adverse inferences from such failure, including presuming the allegations pertaining to them made by the other party to be true.

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27. Witnesses of fact

Please describe the key characteristics of witness evidence in your jurisdiction.

A witness offered for testimony by a party will be summoned by the court to appear in the hearing if the court deems his or her testimony relevant to the outcome of the case. Core duties of the witness are to appear before the court and to tell the truth. The court has discretion as to whether it swears in a witness or not. There are limited cases defined by statutory law in which a witness may refuse to testify, for example on the grounds of professional confidentiality. There are no pretrial depositions so that the opposing party may see the witness for the first time during the hearing. Also, there are generally no written witness statements. Examination of witnesses is generally led by the court. Courts generally invite a witness to testify by giving his or her own comprehensive rendition of the facts. Parties and their lawyers have the opportunity to ask supplemental questions after the court has finished the questioning. Aggressive cross-examination is unusual and frowned upon by most courts.

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28. Expert witnesses

Who appoints expert witnesses? What is the role of experts?

Only the opinion of a court-appointed expert counts as expert evidence. Opinions of party-appointed experts are generally only given the weight of party pleadings. Thus, the court generally chooses the expert. The court may invite suggestions by the parties and, in case the parties agree on an expert witness, the court must appoint such person. The court instructs the expert witness and may demand a written expert report. The expert is usually asked to appear before the court for questioning by the court and the parties.

It is the expert's duty to neutrally examine and verify specific questions of fact disputed between the parties that cannot be assessed by the court itself. Questions of (domestic) law cannot be the subject of expert testimony.

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29. Party witnesses

Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

German law distinguishes between the examination of witnesses and the examination of a party. Technically, a party and certain party directors and officers cannot serve as witnesses. Where no other evidence is available, one party can request the examination of the opposing party (but not its own examination). The examination of a party on its own behalf is only permissible where there is some other piece of evidence for the fact to be proven. Apart from the formal examination of a party, courts generally interview the parties as to their positions at an early stage; any statements made by a party in such context are no formal evidence but may nevertheless be considered in the overall assessment of evidence. In this regard, negative inferences may be drawn.

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30. Foreign law and documentation

How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

Although the language of the proceedings is German, parties increasingly submit English language documents as exhibits. The courts may then ask for a translation if necessary.

If foreign law is necessary to determine the outcome of the case, German courts will usually appoint a legal expert.

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31. Standard of proof

What standard of proof applies in civil litigation? Are there different standards for different issues?

In civil proceedings, German law generally requires full proof. The court must be fully convinced of a fact to be proven; this must be backed by objective evidence. Circumstantial evidence may be enough for full proof, if the court is fully convinced. Mere probability is not enough.

The standard of proof may be different in certain cases either by statute or established in case law. For the purposes of determining the amount of damages, for example, standard of proof is preponderance of the evidence (section 287 ZPO).

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Appeals

32. Options for appeal

What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

The options to appeal depend on the entry level. Claims brought before the district courts may be appealed to the regional courts if the amount in dispute is more than €600. A further appeal to the Federal Court of Justice is only admissible if it is granted by the regional court.

Decisions of the regional courts are subject to appeal before the higher regional courts. Further appeal to the German Federal High Court of Justice is available, if granted by the higher regional court. In cases involving an amount in dispute of more than €20,000, a non-admissibility complaint may be lodged with the Federal Court of Justice if the higher regional court does not grant the further appeal on matters of law.

Further appeal on matters of law is only granted on issues of fundamental importance, to further develop the law in general, or to achieve a homogenous application of the law throughout Germany.

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33. Standard of review

What aspects of a lower courts' decisions will an appeals court review and by what standards?

Generally, the appeals court reviews issues of law. If it is doubtful that facts were

established properly before the court of first instance, those facts will be reviewed. The appeals court will also consider new evidence not yet available to the parties at trial level.

Upon further appeal, the Federal Court of Justice will only review matters of law. This includes also procedural law, so finding of facts by the lower courts may be overturned.

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34. Duration of appellate proceedings

How long does it usually take to obtain an appellate decision?

The duration of appellate proceedings depends on the type of decision (outright rejection of appeal or retrial), the competent court and the complexity of the case. If an appeal is manifestly unfounded, a decision may be rendered within a year. Most cases are decided within one to two years.

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Special proceedings

35. Class actions

Are class actions available?

As a general rule, class actions do not exist. However, more than one claimant may participate in a proceeding. In cases of cartel damages claims, claimants have also assigned their claims to a special purpose vehicle to bundle these claims.

For certain violations of capital markets provisions, harmed investors may choose to commence a sample proceeding, the outcome being binding for the other plaintiffs.

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36. Derivative actions

Are derivative actions available?

There are no specific rules on derivative actions in German law. However, a limited number of corporate derivative actions were established in case law, such as shareholders acting on behalf of the company against other shareholders. In limited circumstances shareholders may also bring certain claims against third parties or the management on behalf of the company.

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37. Fast-track proceedings

Are fast-track proceedings available?

An alternative to filing a claim may be an application for a payment order and later for an enforcement order. This proceeding is an expedited automated proceeding to obtain an enforceable title in a short period of time. The validity of the claim will only be determined by a court if the defendant objects to it. Upon objection, regular court proceedings commence and the plaintiff has to motivate his claim.

There are also special documentary proceedings where a provisional judgment may be

rendered based on documentary evidence only. However, the defendant has the right to initiate subsequent proceedings not limited to documentary evidence. In its final judgment, the court may then amend, modify or affirm the provisional judgment.

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38. Foreign-language proceedings

Is it possible to conduct proceedings in a foreign language?

In general, proceedings must be conducted in the German language (see question 30). There was a legal reform project in the last legislative period, which would have allowed for special chambers of international commerce at the regional courts, where English could have been chosen as the language of the proceedings. It remains to be seen if this project will be picked up in the current legislative period.

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Effects of judgement and enforcement

39. Effects of a judgment

What legal effects does a judgment have?

A judgment issued by German court is usually binding only *inter partes*. Very limited exceptions may apply in special proceedings, for example in shareholder actions.

The doctrine of *res judicata* applies, so an identical lawsuit may not be brought twice. As the legal system is a civil law system, courts are not bound by precedents. This applies to both factual and legal findings.

Third parties may be bound to certain factual and legal findings if they were given proper third-party notice.

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40. Enforcement procedure

What are the procedures and options for enforcing a domestic judgment?

There are a number of procedures for the enforcement of a judgment, depending on the type of judgment and the assets to be seized. Competent authorities may differ depending on the type of enforcement measure.

When enforcing a money judgment, German law differentiates between moveable (physical objects and claims or other property rights) and immovable assets (real estate, ships).

Claims are usually attached and transferred to the creditor, while physical objects are sold off in an auction.

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41. Enforcement of foreign judgments

Under what circumstances will a foreign judgment be enforced in your jurisdiction?

The enforcement of judgments rendered in another EU member state is governed by the Brussels I Regulation. Pursuant to Article 33 such judgments are recognised without any

special procedure being required. They shall be declared enforceable upon application to a presiding judge of a chamber of a German regional court. Recognition may be denied in certain instances, for example if the decision is manifestly contrary to public policy (article 34 et seq. of the Brussels I Regulation).

Judgments rendered in non-EU states must be recognised first. This is usually done by way of an

action for a declaratory judgment by the party relying on the judgment. The foreign judgment must satisfy certain prerequisites listed in section 328 ZPO before a court renders it enforceable.

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Costs

42. Costs

Will the successful party's costs be borne by the opponent?

Germany operates under the "loser pays" system. The losing party bears court costs and their opponent's attorney fees. Costs may be split if both parties lose in part.

Only statutory attorney fees and reasonable expenses will be reimbursed.

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43. Legal aid

May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

A court will grant legal aid if a party is in financial need and the claim or defence has a reasonable chance of success. Legal aid covers court and attorney fees and may need to be repaid in instalments depending on the financial situation.

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44. Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

Contingency fees are generally prohibited by law. In circumstances where a client would otherwise not be able pursue or defend a claim for economic reasons, a contingency fee may be agreed. This exception is rarely used, as legal aid is usually available in such situations.

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45. Third-party funding

Is third-party funding allowed in your jurisdiction?


Apart from certain rules concerning the legal protection insurance, there are no specific regulations regarding third-party funding. Third-party-funding companies usually require the financed party to work closely with them. However, they cannot formally take over the litigation.

46. Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

The compensation of lawyers in Germany is regulated by the German Lawyer Compensation Act (RVG). Statutory fees are generally tied to the amount in dispute and certain fee-triggering events or actions. The amount in dispute is capped at €30 million or €100 million depending on the situation. It is quite common in complex litigation proceedings to agree on hourly rates. However, German law requires the lawyer to charge the statutory fees as a minimum in case of court proceedings.

Reimbursement of costs by the losing party is generally limited to the statutory fees (see question42).

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