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Editors

**Key
Aspects
of German
Business
Law**

A Practical
Manual

Third Edition

 Springer

Key Aspects of German Business Law

Michael Wendler · Bernd Tremml
Bernard Buecker (Eds.)

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Preface

This book presents a clear and precise overview of the key aspects of German business law. It was written by attorneys involved in the daily practice of business law in Germany and is aimed at people who wish to orient themselves quickly with the German legal system and the manner in which it impacts business purchases, establishment, operations and liquidations.

The first section of the book is devoted to an explanation of the major issues to be considered in acquiring or establishing a business in Germany. The second section focuses on areas of commercial law that are important for an operating business. The following sections deal with labor law as an independent part of German business law and with computer law. Furthermore, procedural law and European law are addressed. Finally, the last two sections of the book are devoted to an overview over the German tax law, which has an enormous impact on business decisions, and IP law. In all sections special attention has been paid to highlighting and explaining the differences between the German legal system and that of the United States. Nevertheless, the intention is to provide information that will prove valuable to all foreigners, particularly business men and women and lawyers advising clients with an interest in doing business in Germany.

Although it is the object of this book to provide readers with a general orientation and the foundation for making informed decisions concerning business transactions in Germany, it cannot possibly function as a substitute for case-specific professional advice and by no means purports to do so. Those readers who wish to follow up on any decisions they may have formed on the basis of the material presented here are well advised to seek the guidance of qualified attorneys and tax advisors before entering into any binding obligations.

This holds particularly true in light of the fact that all information here is based on the laws that were in effect in the Federal Republic of Germany on the first of November 2005.

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Glossary of German terms and abbreviations


A

Abgabenordnung (AO)	Tax Code
Abstraktionsprinzip	abstraction principle
Abtretung	assignment
Allgemeine Geschäftsbedingungen (AGB)	General Terms of Business
Amtsblatt der Europäischen Union	Official Journal of the European Union
Amtsgericht	Court of Small Claims; municipal court
Änderungskündigung	a termination of a contract with the reserved right to renew it under altered conditions
Änderungsvertrag	contract of amendment
Angestellte	employees; salary earners; “white collar” workers
Aktiengesellschaft (AG)	stock corporation
Aktiengesetz (AktG)	Corporation Act
Aktionär	stockholder (of a stock corporation)
Aktie	a share of stock; stock certificate
Arbeiter	laborers; “blue collar” workers
Arbeitserlaubnis	work permit
Arbeitserlaubnisverordnung (AEVO)	Work Permit Regulations
Arbeitsförderungsgesetz (AFG)	Work Promotion Act
Arbeitsgerichtsgesetz (ArbGG)	Code of Labor Procedure
Arbeitslosenversicherung	occupational incapacity insurance
Arrest	Freeze Order
Arzneimittelgesetz (ArzneimittelG)	Pharmaceutical Products Act
Aufenthaltserlaubnis	temporary residence permit

Aufenthaltsgesetz	Federal Residence Act
Aufsichtsrat	supervisory board of a company or corporation
Ausländer	foreigner; alien
Ausländergesetz (AuslG)	Aliens Act
Ausländeramt	Aliens Office
Außenministerium	Department of Foreign Affairs
Außenwirtschaftsgesetz	Federal External Trade Act

B

Begehungsgefahr	danger of commission of an offense
Bergamt	mining authorities
Berufsgenossenschaft	administrative authorities in charge of providing social insurance due to occupational accidents
Berufungsverfahren	appellate proceedings (to the next higher court)
Beschäftigungsverordnung (BeschV)	Employment Regulation Order
Betriebsaufgabe	abandonment of a business enterprise
Betriebsrat	works council
Betriebsstätte	operational location (dependant branch office)
Betriebsverfassungsgesetz (BetrVG)	Employee Representation Law
Bezirk	district
BGB-Gesellschaft	see Gesellschaft des bürgerlichen Rechts
BGB-InfoV	Federal Ordinance on the Duty to Provide Information to the Consumer
Bilanzrichtliniengesetz	commercial balance sheet
Bilanzrichtliniengesetz	Accounting Directives Act
Bundesagentur für Arbeit	Federal Employment Office

Bundesarbeitsgericht	Federal Labor Court
Bundesministerium für Arbeit und Soziale Sicherung	Federal Department of Labor and Social Order
Bundesfinanzhof	Federal Finance Court
Bundesgerichtshof (BGH)	Federal Supreme Court
Bundeshaushaltsordnung	Federal Budget Code
Bundesimmissionsschutzgesetz (BImSchG)	Federal Emission Act
Bundeskartellamt	Federal Cartel Authority
Bundesrechtsanwaltsordnung (BRAO)	German Bar Act
Bundesrechtsanwaltsgebührenordnung (BRAGO)	Attorneys' Fee Ordinance
Bundespatentgericht	Federal Patent Court
Bürgerliches Gesetzbuch (BGB)	Civil Code
Bürge	guarantor
Bürgschaft	surety or personal guarantee
Bundesverfassungsgericht	Federal Constitutional Court
	
Darlehen	loan intended for consumption (normally a monetary loan)
Delikt	tort, (compensatory) unlawful act
Deutsche Angestelltengewerkschaft	White Collar Union
Deutscher Beamtenbund	Civil Servants' Union
Deutsche Bundesbank	Federal Reserve Bank of Germany
Deutscher Gewerkschaftsbund (DGB)	German Association of Industrial Labor Unions
Dienstvertrag	contract for services (without any promise of specific result, as opposed to a Werkvertrag)
dinglicher Vertrag	real contract

dispositives Gesetzesrecht	non-mandatory statutory law
Duldung	residence toleration
Durchführungsverordnung zum Ausländergesetz (DVAuslG)	Implementation Ordinance of the Aliens Act

§

Einfuhrumsatzsteuer	import turnover tax
Einführungsgesetz zum BGB (EGBGB)	Introductory Act to the Civil Code
Einigungsgebühr	settlement fee
Einkommenssteuer	personal income tax
Einkommenssteuergesetz	Income Tax Act
einstweilige Verfügung	(preventive) injunction
Einzelunternehmen	sole proprietorship
Entscheidungen des Bundesgerichtshofs in Zivilsachen (BGHZ)	Decisions of the Federal Court for Civil Cases
Entsendung	posting
Erbbaurecht	Inheritable Building Right
Erbrecht	Inheritance law
Erbschaftssteuer	Inheritance and gift tax
Erfolgshonorar	contingent fee
Erstbegehungsgefahr	danger of first-time commission of an offense
Europäische Gesellschaft	societas europaea (SE), European stock corporation
Europäisches Patentamt	European Patent Office
Europäische Wirtschaftliche Interessenvereinigung (EWIV)	Business for multinational enterprises comparable to the general partnership
Europäischer Gerichtshof (EuGH)	European Court of Justice (ECJ)
Europäischer Wirtschaftsraum (EWR)	European Market

F

Fernabsatzgesetz	Act on Distant Sale Contracts
Fernstraßenbaufinanzierungsgesetz	Private Highway Construction Financing Act
Finanzamt	tax office; tax authorities
Firma	legally: corporate name
Freizügigkeitsgesetz/EU	Freedom of Movement Act/EU

G

Gebührensatz	rate of charges/fee rate
Gebührenvereinbarung	fee agreement
Gefährdungshaftung	no-fault tort liability
Gegenstandswert	value of the subject matter
Gemeinde	community or municipality
Gentechnikgesetz (GenTG)	Genetic Technology Act
Geräte- und Produktsicherheitsgesetz (GPSG)	Equipment and Products Safety Act
Gerichtskostengesetz (GKG)	Court Costs Act
Gerichtsvollzieher	sheriff's officer (official debt collector)
Gesamtbetriebsrat	combined or overall works council (of more than one business unit)
Gesamthandsvermögen	joint ownership (of the property of a partnership)
Geschäftsbesorgungsvertrag	contract for business services
Geschäftsführung ohne Auftrag	settlement of a third party's legal obligations without a contract
Geschäftsgebühr	fee for out-of-court work
Gesellschaft des bürgerlichen Rechts (GbR)	(also: BGB-Gesellschaft) civil-law partnership
Gesellschaft mit beschränkter Haftung (GmbH)	limited liability company

Gesellschafter	shareholder (in a limited liability company)
Gesellschafterversammlung	shareholder meeting (limited liability company)
Gesellschaftsvertrag	articles of incorporation
Gesetz	law or act
Gesetz gegen Werbung auf dem Gebiet des Heilwesens	Law against Advertising in the Health-Care Sector
Gesetz gegen den unlauteren Wettbewerb (UWG)	Unfair Competition Act
Gesetz gegen Wettbewerbsbeschränkungen (GWB)	Act Prohibiting Restrictions of Competition
Gesetz über den Vertrieb ausländischer Investmentanteile (AusInvestmG)	Law on Foreign Investment Shares
Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (AGBG)	Law for the Regulation of General Business Terms
Gewerbeaufsichtsamt/ Gewerbeamt	Trade Supervision Office
Gewerbeordnung (GewO)	Trade Supervision Law
Gewerbesteuer	trade tax
Gläubiger	creditor
Gläubigerversammlung	creditor's meeting (in an insolvency proceeding)
Gläubigerverzug	delay of the creditor
GmbH & Co KG	business organizational form which is a combination of a limited liability company and a limited partnership
GmbH-Gesetz (GmbHG)	GmbH Act (law governing limited liability companies)
Gründungstheorie	incorporation theory (of business enterprises)
Grundbuch	land register at the local court
Grunderwerbssteuer	real estate transfer tax

Grundpfandrecht	Real-estate mortgages
Grundsätze ordnungsgemässer Buchführung	principles of proper accounting
Grundsteuer	real estate/property tax

H

Haftpflichtgesetz (HaftpflG)	Liability Act
Haftungsausschluss	total exemption from liability
Haftungsbeschränkung	limitation of liability
Handelsgesetzbuch (HGB)	Commercial Code
Handelsgewerbe	commercial trade enterprise (owned and operated by individuals who are merchants by profession). Governed by the HGB.
Handelsregister	commercial register
Handlungsvollmacht (see also: Prokura)	full power of attorney (to represent an enterprise)
Handwerksordnung	Handicrafts Code
Hauptfürsorgestelle	Head Office for Public Assistance
Hauptniederlassung	company headquarters, main or head office
Hauptversammlung	stockholder meeting (stock corporation)

I

Industriegewerkschaft (IG)	industrial trade union
Industrie- und Handelskammer (IHK)	Chamber of Industry and Commerce
Informations- und Kommunikationsdienstegesetz (IuKDG)	Federal Information and Communication Service Act
Inhaberaktie	bearer stock certificate
Insolvenzordnung	Federal Insolvency Act
Insolvenzplan	insolvency plan
Insolvenzverwalter	insolvency administrator