

Client Briefing

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English-language commercial litigation in Germany: Commercial Courts Act comes into force

On 1 April 2025, the "Act to Strengthen Germany as a Forum by Introducing Commercial Courts and English as the Language of the Courts in Civil Jurisdiction" comes into force. The Act is intended to strengthen Germany's attractiveness for international commercial disputes and better allow the German judiciary to compete with foreign courts and arbitration.

I. Objective of the law: Strengthening Germany as a centre of justice and business

For years, various parties have been complaining that the German judiciary is losing its appeal in competition with foreign courts and arbitration. The "Act to Strengthen Germany as a Forum by Introducing Commercial Courts and English as the Language of the Courts in Civil Jurisdiction", which came into force on 1 April 2025, aims to remedy this situation. The Act is designed to strengthen Germany as a centre of justice and business by introducing new procedural rules and institutional measures to ensure the swift and efficient resolution of international (high-stakes) commercial disputes.

Key changes include authorising the German states (*Länder*), traditionally in charge of judicial organisation, to establish specialised panels (known as Commercial Chambers and Commercial Courts) to hear

business disputes, including as first-instance proceedings before the Higher Regional Courts, the possibility of conducting proceedings in English and the creation of new regulations to better protect trade secrets in civil proceedings.

II. Commercial Courts at the Higher Regional Courts

In line with the basic structure of the German judiciary, the Act authorises the states to establish special first-instance courts for high-stakes business disputes at the level of the Higher Regional Courts (known as Commercial Courts). The Higher Regional Court level, which typically hears appeals against first-instance judgments, consists of highly experienced judges with extensive resources, allowing for deeper expertise and a stronger focus on the individual proceedings. At the level of the Regional Courts, corresponding formations (known as Commercial Chambers) will be provided for

smaller disputes that fall within the Commercial Court's jurisdiction but do not exceed an amount in dispute of EUR 500,000.

If the parties agree, the Commercial Courts have jurisdiction at first instance for civil disputes between businesses (with the exception of disputes in the field of industrial property rights, copyright and claims under the Unfair Competition Act), for disputes arising from or in connection with the acquisition of a company or shares in a company (post-M&A disputes) and for disputes between a company and members of its management body or supervisory board for amounts in dispute of EUR 500,000 or more. The states have the option of limiting the jurisdiction of the Commercial Court to certain subject areas or extending it to other subject areas.

The parties may expressly or tacitly agree on the jurisdiction of the Commercial Court in the first instance without adhering to a specific form. In the absence of a pre-litigation agreement, the jurisdiction of the Commercial Court is also established if the claimant requests this in the Statement of Claim and the defendant does not dispute this.

The Act currently assumes that there will be at least five different Commercial Courts across Germany. Based on the discussion among the states, Bavaria, Baden-Württemberg, Hamburg, Hesse, North Rhine-Westphalia and perhaps Berlin will each set up a Commercial Court. The state of North Rhine-Westphalia has already prepared the establishment of a Commercial Court by means of a corresponding statutory instrument, so that a specialised senate can be set up at the Düsseldorf Higher Regional Court as early as April 2025.

III. English as the language of proceedings

Until now, it has only been possible to litigate in English in the German courts in exceptional cases. Before the Commercial Courts and Commercial Chambers, proceedings can be conducted in English if the parties agree or the defendant makes submissions in English without objecting. Where these conditions are met, the entire proceedings are conducted in English, including court orders, oral

hearings, transcripts, any taking of evidence and all pleadings. A translation of English-language documents is not required and a translation of German-language documents is only required upon request. Nonetheless, an interpreter or translator may be called in at any stage of the proceedings if this is necessary in individual cases. If the subsequent publication of a court decision is intended, the court must arrange for the translation of the complete decision into German and publish both language versions together.

In the case of English-language proceedings, the court's final judgment is also issued in English. However, at the request of a party, the enforceable court decision must be translated into German, although the translation does not have to contain the facts of the case and the reasons for the decision. This allows for easier enforcement within Germany, since later proceedings for enforcement of a judgment may have to be conducted in German.

IV. Appeals against decisions of the Commercial Chamber and the Commercial Court

The states also have the option of assigning the Commercial Court jurisdiction to hear appeals against decisions by the Commercial Chambers. Appeals against judgments of the Commercial Court can be lodged with the Federal Court of Justice. Appeals against judgments in proceedings conducted in English must be filed in English, although before the top-level Federal Court of Justice proceedings will only be in English where a corresponding application is granted.

V. Case Management Conference and verbatim transcript

The Act also makes certain discretionary elements of German civil procedure, such as a case management conference, mandatory. This further underlines German civil procedure's tendency towards active case management. In a similar attempt to streamline civil litigation with standards common in arbitration, the Act also provides for the possibility of verbatim transcripts, which are otherwise not a feature of German civil litigation.

VI. Improved protection of trade secrets in all civil proceedings

Finally, the Act also introduces changes concerning the protection of trade secrets, which apply not only to proceedings before the Commercial Chambers and Commercial Courts, but to all civil proceedings. For example, a court can now classify potential trade secrets as confidential in whole or in part at the request of a party, whereupon the protection of the Act on the Protection of Trade Secrets (*Gesetz zum Schutz von Geschäftsgeheimnissen*) will apply. All information classified as a trade secret must then be treated confidentially during and after the proceedings. In addition, the court has the option of restricting access to the confidential information and excluding the public from the hearing.

VII. Conclusion

Overall, the Act is a significant update to German civil procedure, primarily because of the convenience value of litigating business disputes in English directly and because of the possibility of commencing proceedings directly before the Higher Regional

Courts. The German judiciary, which already offers a high-quality and cost-effective solution for disputes that do not depend on special features of arbitration such as confidentiality or worldwide enforcement, will thus become even more attractive. Unlike many other European countries, however, the German judiciary is structured in a decentral manner, with several different English-language Commercial Courts set up across the country. While in terms of concentrating cases this may be something of a disadvantage, it also allows for further specialisation, as the different Commercial Courts are likely to focus on different areas of law (eg M&A, IP or similar fields), enabling them to establish themselves as centres of excellence for certain types of disputes. As such, the Act provides an attractive option for parties litigating business disputes, since it allows them to begin directly at the level of the expert Higher Regional Courts, conduct proceedings in English and reduce time-consuming options for appeal.

This client information merely contains a non-binding overview of the subject area addressed in it. It does not replace legal advice. Please do not hesitate to contact us for further information and advice:



Prof. Dr. Jochem Reichert
Rechtsanwalt | Partner
M&A | Corporate Law

T +49 621 4257 209
E Jochem.Reichert@sza.de



Prof. Dr. Ben Steinbrück, MJur (Oxford)
Rechtsanwalt | Partner
Litigation & Arbitration | Corporate Law |
Commercial

T +49 621 4257 219
E Ben.Steinbrueck@sza.de



**Dr. Justin Friedrich Krahe,
LL.B. (UCL)**
Rechtsanwalt | Associate
Litigation & Arbitration

T +49 69 9769601 503
E Justin.Krahe@sza.de