

Client Briefing

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Trade Secret Protection in German Civil Litigation – The New Section 273a of the Code of Civil Procedure

German civil litigation has long been characterised by its public nature, which can pose significant risks for businesses needing to rely on confidential information in court. Until recently, companies faced a stark choice: disclose sensitive trade secrets and risk losing their competitive edge, or withhold information and jeopardise their legal position. The introduction of Section 273a of the Code of Civil Procedure (ZPO) in April 2025 marks a major reform, allowing parties to request court protection for trade secrets at any stage of proceedings. This new mechanism obliges all participants to maintain confidentiality, enables the court to restrict access to sensitive material, and imposes sanctions for breaches. The reform applies to all civil and commercial cases, including those already pending, and brings German practice closer to international standards. While not a complete solution, Section 273a ZPO is a significant step towards making German courts more attractive for business disputes involving confidential information.

I. Confidential business interests in litigation before the State courts

German civil justice is built on the principle of transparency. Court hearings are generally open to the public, judgments are pronounced in public, and —once submitted — documents and filings may be inspected by third parties, including journalists, competitors, and other interested observers. This tradition is rooted in the idea that justice should not only be done, but be seen to be done, ensuring accountability and public trust in the legal system.

However, this openness can create significant challenges for businesses involved in litigation. Companies often need to rely on sensitive information —such as manufacturing processes, customer lists, pricing strategies, research and development data, or internal financial figures — to prove their case or defend against claims. If a company discloses such information in court, it risks losing its confidential character, potentially exposing valuable trade secrets to competitors or the public. On the other hand, if the company withholds this information to protect its secrecy, it may be unable to substantiate its claims or defenses, jeopardizing its chances of success in the litigation. In practice, the risk of forced disclosure can lead to

parties instead choosing arbitration or foreign jurisdictions.

Until recently, the German legal system offered only limited and inconsistent remedies for this problem. While courts could exclude the public from hearings in exceptional cases, these measures were discretionary, applied only to oral proceedings, and did not prevent the opposing party from using the information for their own purposes after the case. There was no comprehensive mechanism to protect confidential information submitted in written form or to ensure ongoing secrecy after the conclusion of the case. As a result, the risk of losing control over sensitive business information was a real and persistent concern for companies considering litigation in Germany.

II. Introducing sec. 273a ZPO

Recognizing the need to address these shortcomings, the German legislator has now introduced a new provision — Section 273a of the Code of Civil Procedure (Zivilprozessordnung, “ZPO”) — effective 1 April 2025, although the provision applies retroactively to disputes already pending. This reform is part of a broader effort to strengthen Germany’s position as a venue for commercial disputes, including the establishment of specialized Commercial Courts and the option to conduct proceedings in English¹ and the (currently suspended) reform of German arbitral law.²

Sec. 273a ZPO allows any party to a civil or commercial lawsuit to request, at any stage of the proceedings, that specific information be classified as “confidential” by the court. This request can be made as early as the initial filing or at any later point when sensitive information becomes relevant. The party seeking protection must identify the information in question and provide plausible evidence that it qualifies as a trade secret. Under the German Act on the Protection of Trade Secrets (*Gesetz zum Schutz von Geschäftsgeheimnissen – GeschGehG*), this means the information is not generally known or readily accessible, has

commercial value because it is secret, and is subject to reasonable measures to keep it confidential (such as internal policies, restricted access, or non-disclosure agreements). Importantly, the standard is not full proof but plausibility—making it easier for parties to seek protection without exposing the very information they wish to keep secret.

Once the court grants the request, several important consequences follow:

- **Duty of Secrecy:** All participants in the proceedings — including parties, their lawyers, experts, and witnesses — are legally obliged to keep the protected information strictly confidential. They may not use or disclose it outside the context of the litigation, and this obligation continues even after the case concludes.
- **Restricted Access:** The court has the power to limit who can access the confidential material. This may include restricting access to certain documents, providing redacted versions to the opposing party, or excluding the public from parts of the hearing where sensitive information is discussed. In some cases, only a limited number of trusted individuals on each side may be allowed to view the full details.
- **Sanctions for Breach:** Violations of the confidentiality order can result in significant penalties. The court may impose fines of up to €100,000 or, in serious cases, order short periods of custodial sanctions. These measures are intended to deter misuse and reassure parties that their secrets will be protected.

¹ See our previous Client Briefing [English-language commercial litigation in Germany: Commercial Courts Act comes into force](#) (2 April 2025).

² See our previous Client Briefing [German Federal Ministry of Justice publishes Draft Bill for the Modernisation of Arbitration Law](#) (4 March 2024).

III. Practical Advice

To make the most of the new protections and avoid potential pitfalls, businesses should consider the following points:

- **Plan Early and Strategically:** If there is any chance that confidential information will become relevant in a dispute, it is essential to plan ahead. Prepare a summary or description of the sensitive material that allows the court to understand why protection is needed, without disclosing the full details in the initial application. This can help the court make a prompt decision and minimize the risk of inadvertent disclosure.
- **Document Internal Safeguards:** The court will assess whether the company itself treats the information as secret. This means having clear internal policies, restricting access to sensitive data, using non-disclosure agreements with employees and business partners, and marking confidential documents appropriately. Demonstrating these measures not only strengthens the case for protection but is also a requirement under the Act on the Protection of Trade Secrets.
- **Be Ready to Provide Evidence:** While the standard for protection is plausibility rather than full proof, the company should be prepared to provide supporting evidence—such as internal guidelines, access logs, or examples of how the information is used in the business. The more clearly the company can show that the information is valuable and genuinely secret, the more likely the court is to grant protection.
- **Understand the Limits:** Sec. 273a ZPO is a major step forward, but it does not make German litigation entirely confidential. The opposing party and their legal representatives will usually have some access to the information, subject to confidentiality obligations. The court may also need to balance the need for secrecy with the right to a fair trial and the interests of justice. In some cases, it may not be possible to exclude all risks of disclosure.

IV. A Step in the Right Direction: Germany's Evolving Approach to Business Litigation

The introduction of sec. 273a ZPO marks a significant shift in the German legislature's approach to civil justice. For many years, the structural characteristics of German court proceedings—especially the emphasis on openness and transparency—have made the system less attractive for businesses with sensitive information at stake. This has driven parties to seek out foreign legal systems or arbitration, which can be more favourable to concerns of confidentiality.

The enactment of sec. 273a ZPO demonstrates the German legislator's willingness in recent years to view state conflict resolution as a service that must be attractive to its users. The new rule is designed to be user-friendly, allowing parties to request protection quickly and with limited formalities. It reflects an understanding that, in a globalized economy, the ability to safeguard trade secrets is a key factor in choosing where to litigate. The reform also brings Germany more in line with international standards and the expectations of multinational businesses.

Sec. 273a ZPO is a substantial improvement over the previous regime. The rule provides a clear, predictable, and enforceable mechanism for protecting confidential business information in court. It reduces the risk that companies will be forced to choose between enforcing their rights and protecting their secrets.

In the broader context, this amendment is part of a trend towards making German civil justice more responsive to the needs of commercial parties. The establishment of Commercial Courts, the option to conduct proceedings in English, and the willingness to adapt procedural rules all signal a commitment to maintaining Germany's competitiveness as a legal venue. For businesses, this means greater confidence in the ability to resolve disputes in Germany without undue risk to their most valuable assets.

Ultimately, sec. 273a ZPO is a welcome step towards a more modern, business-friendly approach to civil litigation. It acknowledges the realities of the market economy and the importance of confidentiality in commercial disputes. As the new rule is applied and interpreted by the courts, it is likely to further enhance the attractiveness of German civil justice for complex, high-value cases where trade secrets matter.

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