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ENGLISH-SPEAKING COMMERCIAL COURTS OPEN IN MANNHEIM AND STUTTGART

On 1 November 2020, English-speaking Commercial Courts opened for business in Mannheim and Stuttgart as part of a general drive to increase the Germany's attractiveness as a hub for international dispute resolution. The new Commercial Courts are intended to provide an alternative to both arbitration and to the national courts of other jurisdictions, particularly as regards high-value commercial disputes. SZA Schilling, Zutt & Anschütz are now acting for clients in both Commercial Courts, with oral hearings scheduled to begin in January 2021.

In reaction to international trends, the state of Baden-Württemberg has established two English-speaking Commercial Courts. These are intended to increase the appeal of litigating in Mannheim and Stuttgart: Capitalising on the German judiciary's strong reputation, the new Commercial Courts are intended to provide cross-border commercial dispute resolution with a reliable, efficient alternative to arbitration or litigation in other jurisdictions. The state government, emphasising the international renown of the German judiciary, hopes to build on a long history of independence and expertise by creating specialised Commercial Courts for international and high-value claims, bringing the experience of three professional judges to each case and combining this with stronger case management and the use of modern technologies such as video hearings. Together, this is supposed to provide effective, high-quality justice at reasonable prices.

The single greatest novelty, however, is the possibility of conducting proceedings almost entirely in English. With the exception of writs, transcripts and judgments – where a currently hotly-debated federal law mandates that German must be used –, all proceedings can take place in English, with a number of judges holding English-language Masters' degrees or hav-

ing previously worked for international commercial law firms. In particular, this means that costly and time-consuming translations will no longer be necessary for most documents. Since experience shows that in practice the problems associated with German-language writs in English-language proceedings are easily overcome, this is expected to drastically increase the attractiveness of state-based German proceedings and provide a further incentive to international actors to choose this forum for dispute resolution.

The creation of the Commercial Courts is in part a reaction to the United Kingdom's withdrawal from the European Union. As matters currently stand, the United Kingdom will no longer benefit from a number of EU rules on civil procedure after the end of the transition period, and will in principle be subject to the same complex rules that apply to other third countries. For trans-border matters, this means that a number of beneficial rules will no longer apply, for example as regards jurisdiction or international service of documents.

As London correspondingly becomes less attractive for international dispute settlement, the role of litigation in EU Member States increases. In the future, parties interested in speedy proceedings within the European Union and in the

rapid enforcement of foreign awards without lengthy recognition proceedings will be well-advised to litigate in the courts of an EU Member State, a development which the state of Baden-Württemberg is trying to capitalise on.

In addition to these legal advantages, the state government has also emphasised that the Commercial Courts will be equipped with up-to-date legal infrastructure. This is intended to expedite proceedings, particularly by combining active case management with clear case schedules and flexible capabilities for (multi-day) hearings. Both locations have been designed to state-of-the-art technical specifications and are intended to feature extensive use of modern means of communication, such as video conferencing or oral transcripts.

The creation of these new Commercial Courts reflects a number of lessons learned from international arbitration, particularly as regards the possibility of conducting proceedings in English and of using modern technology. The Commercial Courts are supposed to combine these advantages with the traditional strengths of state-based litigation, such as completely independent judges, efficient enforcement and effective

interim relief at comparatively low cost. While it is true that the Commercial Courts do offer a number of benefits, international arbitration will still remain the go-to choice in many situations: Where the parties require confidentiality, free choice of judges or the ability to enforce awards internationally, arbitration continues to hold key advantages over the Commercial Court.

SZA Schilling, Zutt & Anschütz are now acting for clients before both locations of the Commercial Court – in fact, in Mannheim SZA has been instructed in the very first set of proceedings ever heard. This gives us the opportunity to combine decades of experience representing parties to international commercial disputes both in litigation and in international arbitration with our unique knowledge of the court system in Mannheim and Stuttgart, putting us in an optimal position to test the new Commercial Courts.

The first sets of oral hearings have now been scheduled for early 2021; we look forward to being able to build upon and expand our previous experience by acting before the new Commercial Courts.

This client briefing constitutes a non-binding overview of recent developments in German competition law and is not intended to replace individual legal advice. In case of comments or questions please contact:



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