大成 DENTONS

Manufacturing in Germany

Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.

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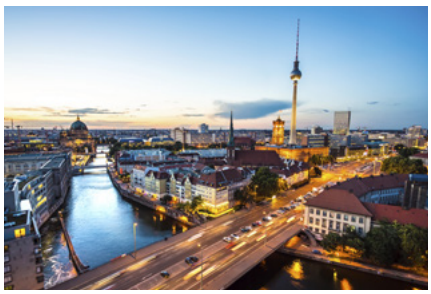
Credentials in Germany

- **Automotive supplier:** Advising on export control and foreign trade issues, on employment law and international legal advice in UK, Australia, Netherlands and Singapore.
- **Defence company from Germany:** Advising on the award procedure for the procurement of Class F125 frigates by the German Navy.
- **Car manufacturer from France:** Advising on a joint venture with the Industrial Development and Renovation Organization of Iran (IDRO) and the importer of Renault products in Iran.
- **Car manufacturer from Germany:** Advising on autonomous driving, in Germany, USA, Europe, Asia, Australia, and other jurisdictions, homologation, regulatory, road traffic laws, technical compliance.
- **Car manufacturer from Germany:** Advising on a Truck business project, a car sharing project and the setup of Knowhow Management System for the M&A department of this premium manufacturer.
- **Car manufacturer from Germany:** Advising on the strategic trade-sale of a majority stake in its subsidiary IT consultancy group to a telecommunication company.
- **Car manufacturer from Japan:** Advising on type approvals, ISO, sampling requirements, certification in Germany, Europe, Australia, Asia.
- **Manufacturer of automotive products:** Advising on procurement and cartel law in tendering of toll handling and cartel law especially concerning bidding consortium.
- **Manufacturers of batteries from Asia:** Advising on supply and technology development agreements, market entry, commercial law, recycling, import questions, GB/T Labelling China.
- **Manufacturer of centrifugal pump technology:** Advising on the implementation of the EU General Data Protection Regulation (GDPR) and the set up of Compliance Management System.
- **Multinational aluminium company from Russia:** Advising on all aspects of the acquisition of a German producer of chemical and metallurgical products of all kinds.
- **Multinational electronics manufacturing company:** Advising on merger control on the acquisition of a leading global supplier of interior components and electronic systems.
- **Multinational glass manufacturer:** Advising on the safety measures prescribed by the Hazardous Substances Ordinance in connection with the repair of a glassmaking furnace.
- **Multinational steel producer:** Advising on the design, implementation and improvement of its global anti-corruption program, with investigations, gifts & entertainment and third party due diligence.
- **Multinational trading company from Japan:** Advising on the establishment of a strategic alliance with a manufacturer of e-buses, including operations in the UK, Germany and Portugal.

Contents

Germany and the European Union



Germany is one of the six founder states of the EU. As the strongest economy in the EU and one of the strongest economies in the world, Germany has a strong domestic market and offers easy access to other EU member states.

There are four free-trade zones in Germany, established and operated under EU law: Bremerhaven, Cuxhaven, Deggendorf and Duisburg. These free trade zones are open to both domestic and foreign entities. They replace the normal customs regime for import and export, promoting economic development and generating more employment and offer a broad set of incentives, such as further tax exemptions, simplified administrative procedures and the provision of infrastructure.

The seal 'Made in Germany' stands for quality and a high standard worldwide. The German workforce is considered with equal qualities.

Moreover, Germany has reliable political, legal and social environments.

Preparing to manufacture: greenfield and brownfield projects

A. Corporate vehicles

German law distinguishes between legal entities and partnerships as vehicles for conducting business. The two corporate vehicles that are most often used in Germany are the German Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH), which is primarily used by small, medium and some of the largest corporations, and the German stock corporation (Aktiengesellschaft, AG), whose shares are publicly traded on the stock exchange and which is primarily used by foreign investors contemplating any form of public offering. Both corporate vehicles can be set up for any admissible purpose and come into existence upon registration with the commercial register.

As an alternative to foreign corporate vehicles, a special entrepreneurial company (Unternehmergesellschaft, UG) was established that can be established without the minimum share capital of €25,000.

Main characteristics of legal entities (compared to partnerships):

- Separate legal entity
- Liability towards third parties is limited to the company's share capital
- Represented by special corporate bodies such as management board, supervisory board and managing director

Instead of establishing a company, foreign investors tend to start up business with a German branch. The branch may be managed from abroad, however a brand manager must be appointed in Germany.

B. Real Estate, Construction and Insurance

Real Estate

No restrictions exist regarding the acquisition of real estate by foreigners. However, foreign companies must be able to prove their legal existence and power of representation of those persons acting for the company.

Asset purchase agreements have to be notarized before a German notary. The notary serves as an independent party throughout the purchase process and liaises with involved public authorities such as the land register and the tax office.

Legal ownership transfers upon registration with the local land register.

The land register is a public register that is maintained at the local courts. It enjoys public faith in the correctness of its entries and is divided into three sections:

- Section 1 – information on ownership
- Section 2 – encumbrances, easements, limited personal easements, usufructs, priority notices and restraints on disposal such as heritable building rights
- Section 3 – liens on the property, i.e. mortgages, land charges and annuity land charges

The rights registered with the land register have different priorities/ranks. Generally, the priority of the rights depends on the time of their registration.

In general, the public can access the land register. However, the respective person must demonstrate a legitimate interest (e.g. in case of an envisaged acquisition of the real estate) to be granted access. Purchasers should always review up-to-date extracts from the land register as well as other relevant public registers such as the register for polluted areas (Altlastenregister) and the register for public charges (Baulastenverzeichnis).

Depending on the respective land register, the registration of the transfer of title can take up to several months. In order to prevent the property from being transferred to a third party within this timeframe, the seller typically grants a priority notice (Vormerkung) in favor of the purchaser. As long as the priority notice is registered with the land register, no third party is able to acquire the property in good faith.

Construction

In Germany, the responsibility for public construction law is divided into federal and national law. Zoning law (Bauplanungsrecht) is federal law. It determines the purpose for which a property may be used and whether a building project fits into its surroundings. In addition, the federal states are responsible for building regulations law (Bauordnungsrecht) which determines how buildings may be constructed to meet planning law requirements.

For the construction, alteration, demolition or change in use of a building, a building permit is required. It is granted if the project complies with the planning and building regulation law as well as with all other applicable laws such as environmental laws.

During the construction phase, the employer must, inter alia, comply with the following:

- Labour Protection Act (Arbeitschutzgesetz, ArbSchG)
- Workplace Ordinance (Arbeitsstättenverordnung, Arb StättV)
- Ordinance on Health and Safety at Construction Sites (Baustellenverordnung, BaustellV)

These provisions stipulate the general principles of safety measures which must be taken. In addition, the contractor has to ensure public safety and appoint a site manager, who is in charge of safety on the construction site and compliance with public ordinances. In addition, the Accident Prevention & Insurance Associations (Berufsgenossenschaften) also provide for accident prevention rules (Unfallverhütungsvorschriften) which substantiate the employer's legal duties to maintain safety. Special accident prevention rules have been passed for construction work. A failure to comply with these rules may result in administrative fines and in criminal and civil liability on the part of the employer.

Finally, the Ordinance on Operational Safety (Betriebsicherheitsverordnung) and the Equipment Safety Act (Gerätesicherheitsgesetz) will become relevant with regard to the safety of the equipment, which is used in the performance of the work.

C. Administrative law – dealing with authorities – including anti-bribery laws

The German Administrative Offences Act (Ordnungswidrigkeitengesetz, OWiG) holds companies responsible for corruption offences committed on behalf of the company by civil law.

Although legal entities cannot be subject to criminal sentences, natural persons acting on behalf of such an entity may be held liable. Under section 30 of the German Administrative Offences Act, a fine may be imposed on a company's representative or person in leading offices. The fine may not exceed €10 million. If the economic gain resulting from the bribe would be out of proportion to a €10 million penalty, however, the fine may be higher (sec. 17 (4) OWiG).

German anti-corruption provisions are contained in the Law on Fighting Corruption (Gesetz zur Bekämpfung der Korruption), the Criminal Code (Strafgesetzbuch, StGB) and the Administrative Offences Act (Gesetz über Ordnungswidrigkeiten, OWiG). Generally, German anti-bribery and corruption law covers both active and passive bribery. Commercial anti-bribery provisions only concern benefits for future actions. As a result, retroactive awards for past performances are usually allowed, except they are meant as an incentive for future actions. The Criminal Code applies to individuals, while companies face civil responsibility under the Administrative Offences Act, if the management has intentionally or negligently not adequately fulfilled supervisory measures, which are necessary to prevent bribery by employees or agents of that company. Corruption offences committed abroad can be enforced in Germany.

Law on Fighting Corruption: Aligns German criminal law with international standards on commercial bribery by expanding provisions on corruption in commercial practice contained in the Criminal Code and criminalizing active and passive bribery of employees/agents of a company.

Criminal Code (sec. 299-302 StGB): Penalizes individuals offering, paying or accepting a bribe (irrespective of whether the bribery is committed by a German or foreign citizen). Executive managers can be held responsible for offences committed by company representatives in case they actively support or fail to stop the offence. Persons convicted of bribery offences face up to 10 years imprisonment, a criminal fine and confiscation of revenue obtained as a result of the offence.

Administrative Offences Act: Holds companies civilly responsible for corruption offenses committed on behalf of the company. Owners and management can be held responsible for intentionally or negligently omitting necessary supervisory measures for preventing criminal offences. The maximum fine is €10 million for willful misconduct and €5 million for negligent conduct. However, penalties can also be higher to allow authorities to confiscate benefits obtained through bribery. Thus, in some cases fines have exceeded €100 million.

No statutory threshold with regard to gifts and hospitality, i.e. advantages of any value can qualify as a benefit. Companies operating in Germany should implement policies to cover such behavior as well as train employees regularly in these areas to ensure that employees understand and follow their gifts and hospitality policies.

Companies should ensure to mitigate their exposure to compliance risks under German law by providing an adequate and effective compliance system that is tailored to the particular company and reviewed periodically to make sure that the bribery risks are adequately addressed.

D. Employment

German employment law is subject to strict requirements in terms of working conditions. Continued payment is generally granted in cases of illness as well as on public holidays. There are special provisions on the protection of employees such as maternity protection.

The salary of an employee is a gross amount from which wage tax and statutory social-security contributions are deducted by the employer before the net salary is paid out.

All employees are subject to income tax, which is directly deducted from the agreed gross salary and transferred to the fiscal authorities by the employer.

For non- EU nationals residence and work permits may be required.

German contractual relationships between employee and employer are highly regulated by statutory legislation, case law, collective bargaining agreements and individual employment agreements. For example, the "at-will" concept (a term used in US labor law for contractual relationships in which an employee can be dismissed by an employer for any reason and without warning as long as the reason is not illegal) does not exist in Germany. Failure to meet statutory obligations, especially those related to employment terminations, can trigger substantial legal and financial risks for the employer.

The applicable statutory laws are spread over numerous statutes. The most important ones are (i) the German Civil Code (Bürgerliches Gesetzbuch, BGB), the Act on Protection against Dismissal (Kündigungsschutzgesetz, KSchG), the Minimum Wage Act (Mindestlohngesetz, MiLoG), the Act on Temporary Employment (Arbeitnehmerüberlassungsgesetz, AÜG), the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG) and the Act on Collective Bargaining Agreements (Tarifvertragsgesetz, TVG).

Although not legally required, employment agreements are generally concluded in written form. If both parties to the employment agreement are bound by collective bargaining agreements (CBAs), the terms and conditions of such CBAs apply as a minimum standard. However, the parties are free to agree on more beneficial terms of employment at any given time.

For employees who are not members of the EU and whose employer is a member of the employers' association, the respective employment agreement regularly contains a clause referring to the relevant CBAs.

In general, employer and employee conclude employment agreements with an unlimited term. Under certain circumstances, and only based on a specific reason, the employer may conclude an employment relationship with a limited term.

When terminating the unlimited employment relationship, employer and employee must generally adhere to a four weeks' notice to the 15th or the end of any month. The employer can be subject to longer minimum notice periods in case of long-serving employees. Thus, in case of an employee who has

been employed for at least 20 years the employer has to adhere to a seven-month notice period to the end of a calendar month.

By law, pregnant and disabled employees, data protection officers and works council members enjoy a higher level of protection against dismissal.

If the company has more than five employees, the employer can only terminate the employment agreement if he has a "socially justifiable reason". The three socially justifiable reasons relate to (i) the individual (e.g. employee illness), (ii) (mis)conduct of the employee (e.g. an employee commits theft) and (iii) business needs (e.g. the number of orders for a product sinks).

The three main components of the German social security system are retirement insurance (compulsory), unemployment insurance (compulsory) and health insurance (voluntary). The costs for social security are generally split equally between employer and employee.

E. Tax and State aid

The profit of corporations (AG, GmbH) is subject to (i) German Corporation Income Tax at a rate of approx. 15.8 percent (including Solidarity Surcharge) and (ii) Trade Tax.

Trade tax is a profit tax levied by the municipalities on business income with a varying tax rate depending on the municipalities from seven to 20.3 percent.

Regarding corporate shareholders provided a minimum of 10 percent shareholding is in place, dividends received are approx. 95 percent exempted from tax.

Excessive (shareholder) debt financing may result in interest expenses not being tax deductible.

Trade tax is a profit tax levied by the municipalities on business income at effective tax rates from seven to 17.5 percent.

Every property owner has to pay real estate tax (Grundsteuer) based on a property's value, which is currently in the process of being modified.

Based on European competition and antitrust laws, the European Commission and the Court of Justice of the European Union are currently reviewing various income tax legislation and rulings of European Union (EU) member states in the light of unlawful 'state aid' that would have to be repaid.

F. Protecting your intellectual property and complying with data privacy obligations

Intellectual Property

Main registerable IP rights in the EU and Germany: patents, utility models, designs, trademarks.

Research if third party IP rights would be infringed by the manufacturer in the EU or Germany.

Assessment whether the manufacturer's IP could and should be registered at the European Patent Office (EPO), European Union Intellectual Property Office (EUIPO), the German Patent and Trademark Office (Patent- und Markenamt – DPMA) and/or at another patent and trademark office.

Under the German Copyright Law (Urheberrechtsgesetz, UrhG) the manufacturer cannot own copyrights. A legal concept, such as the "work-made-for-hire" doctrine in the USA does not exist in Germany. However, the employer (manufacturer) will obtain substantial rights of use and exploitation according to the German Copyright Act (Urheberrechtsgesetz, UrhG) and/or the employment agreement.

Protection of business signs, i.e. company names and logos, requires use in trade. No registration is required.

To maintain protection of registered IP rights, renewal fees must be paid in regular intervals (depending on the registered IP right).

Trade secrets / Know-how

Provisions protecting trade secrets can be found in the German Unfair Competition Law (Gesetz gegen den unlauteren Wettbewerb, UWG), the German Civil Code (Bürgerliches Gesetzbuch, BGB) and the German Criminal Code (Strafgesetzbuch, StGB).

Under current German law, trade secrets are protected from disclosure or exploitation (sec. 17 et seq. of the German Act on Unfair Competition (UWG)). Statutory law does not provide a specific definition of "trade secret" or "know-how". However, according to the prevailing German case law, trade secrets are defined as "technical and non-technical business information concerning a certain business, which is not generally known or readily ascertainable but only known by a restricted number of persons and which is kept confidential according to the will of the person in control of the information."

The EU Trade Secret Directive (Directive (EU) 2016/943 of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure), which was adopted on June 8, 2016, aims to harmonize the civil law provisions in the various member states on the protection of trade secrets, in particular by establishing a homogenous definition of "trade secret" without restricting the subject matter to be protected against misappropriation, i.e. to cover know-how, business information and technological information where there is both a legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved.

Data protection:

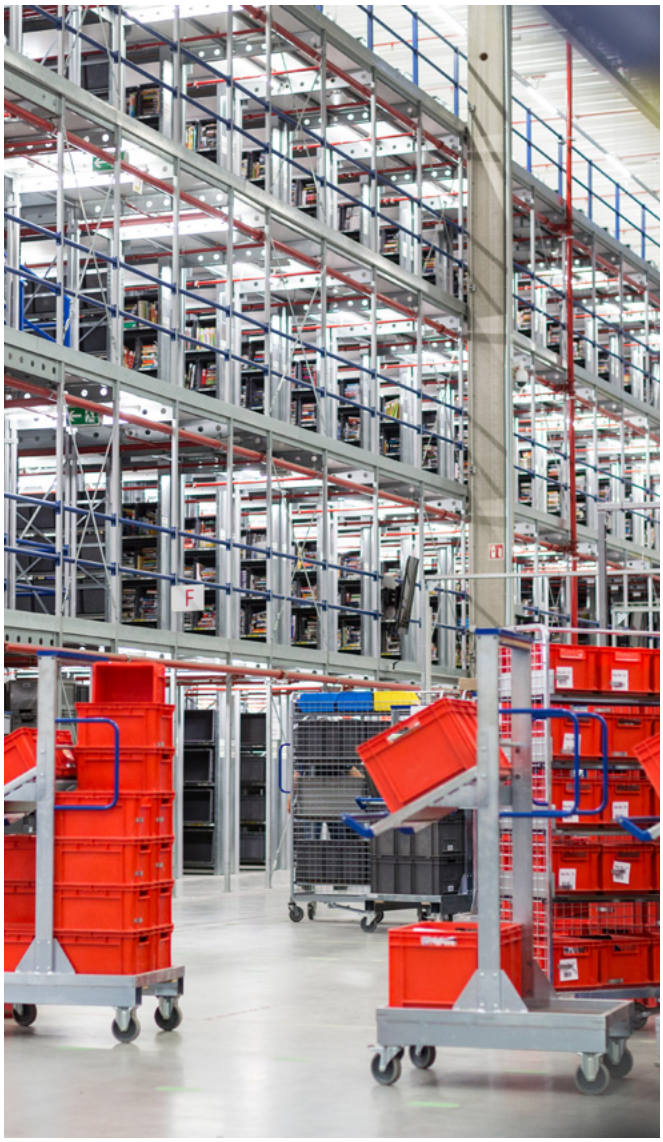
Any company, in- and outside of the EU, having a database that includes EU citizens is bound by the European General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC) (GDPR) – the protection of personal data is a human right, and the GDPR is strictly binding. Personal data may only be collected and processed on a legal basis.

Implementation of a data protection management and documentation system, including completion of data processing agreements with third-party service providers and drafting a data privacy declaration containing information of the data process and the description of the data subject's rights.

Assessment whether a data protection officer is required – very likely.

In the event that the personal data controller is located outside the EU, a representative in the EU should be designated.

If personal data will be processed outside the EU, it should be assessed whether the implementation of appropriate safeguards is required (e.g. EU Standard Contractual Clauses).



Operating

A. Connecting to utilities

In Germany, sewage and waste disposal as well as electricity and water supply belong to the municipality as a function of autonomous administration. Whereas municipalities are legally required to fulfill their duties, they can decide how they take care of them. Therefore, depending on where you are doing business in Germany, electricity and water supply as well as sewage and waste disposal can either be organized by the respective municipality itself or transferred to private companies (which is often the case, in particular in terms of electricity supply where you can choose amongst several private providers).

Connection to grid and use of the system are customer's rights.

Operators of renewable energy installations are prioritized when it comes to any connection to the grid.

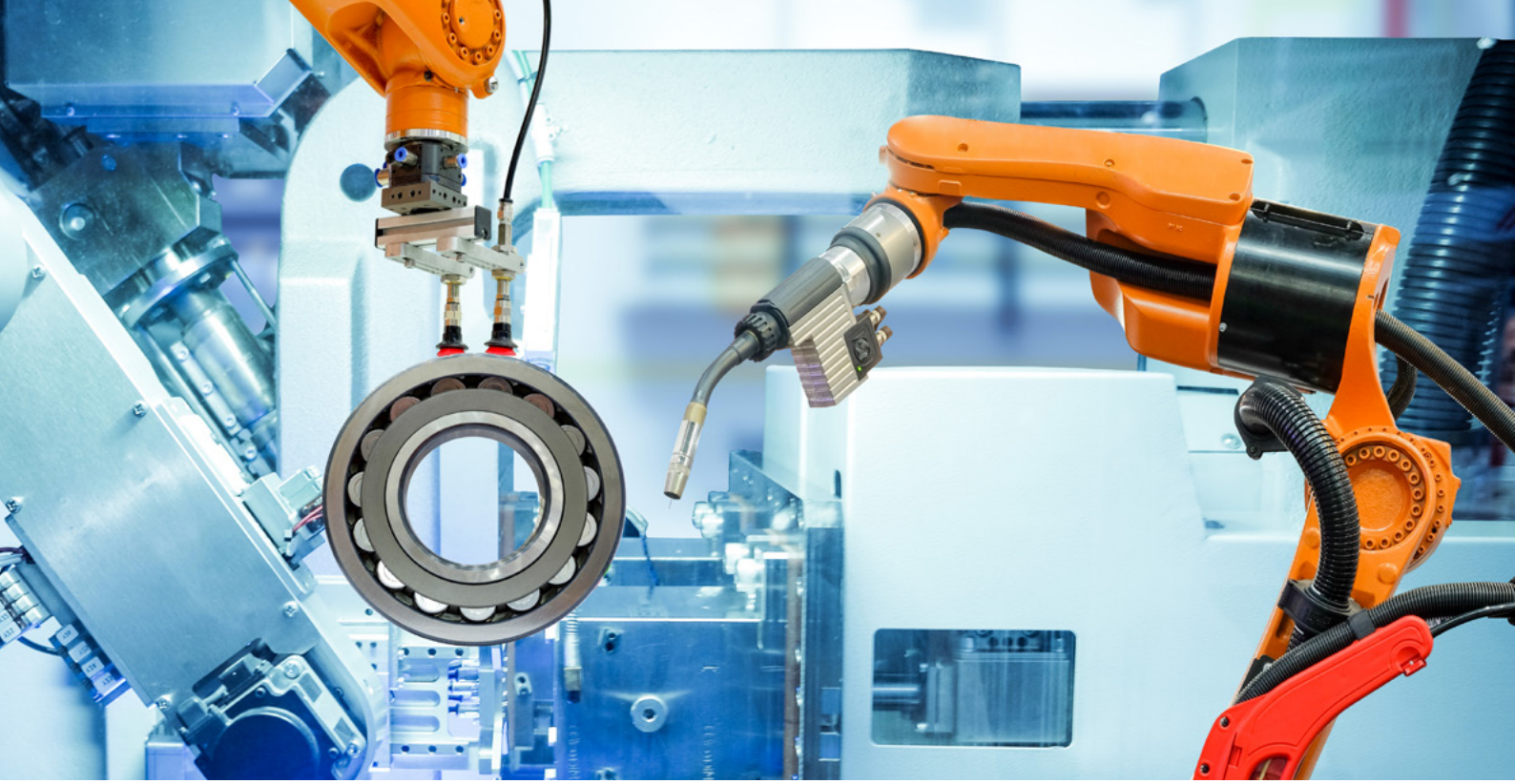
Electricity

Key to Germany's energy policies and politics is the "Energiewende", meaning "energy turnaround". Germany intends to eliminate current use of nuclear power by 2022.

In September 2010, the German government announced a new aggressive energy policy with the following targets: Reducing CO2 emissions 40 percent below 1990 levels by 2020 and 80 percent below 1990 levels by 2050 and increasing the relative share of renewable energy in gross energy consumption to 18 percent by 2020, 30 percent by 2030 and 60 percent by 2050.

The average electricity price for the German industry, businesses and service providers has increased by 184 percent to currently 17.2 Eurocent/KWh. Public charges, apportionments and taxes have increased the electricity price (in particular, the renewable energy apportionment (EEG-Umlage) which promotes operators of wind turbines and solar systems has increased since the year 2000 from 0.2 to 6.79 Eurocent/KWh).

Manufacturing companies with high electricity consumptions may apply for reductions and exemptions from some electricity price burdens.



Such reductions and exemptions include, subject to specific requirements, deadlines and responsible authorities: (i) reduction from the renewable energy apportionment (EEG-Umlage) pursuant to the German Renewable Energy Act (EEG 2017), (ii) reduction from the offshore-liability apportionment pursuant to the German Energy Industry Act (Energiewirtschaftsgesetz, EnWG), (iii) reduction from the grid utilization fees pursuant to the German Electricity Network Fee Ordinance (Stromnetzentgeltverordnung, StromNEV), (iv) limitation of the combined heat and power apportionment pursuant to the German Combined Heat and Power Act (Kraft-Wärme-Kopplungsgesetz, KWKG), and reductions or exemptions from the electricity and energy taxes pursuant to the German Electricity Tax Act (Stromsteuergesetz, StromStG) and the German Energy Tax Act (Energiesteuergesetz, EnergieStG).

Generally speaking, any company in Germany needs to sign an electricity or gas contract with an energy supply company (there are currently more than 1000 in Germany). Otherwise, a type of contract called "Grundversorgung" (default electricity service) will be assigned to the company. While this contract aims to ensure uninterrupted electricity supply, it is nearly always markedly more expensive than other contracts.

Water/Sewage

Prices and fees for fresh and wastewater are important location factors for manufacturing companies. Costs for water and sewage may differ extremely (up to 400 percent) between German municipalities.

Supply of water to companies is usually handled by local private or public utility companies, in most cases owned by the respective city or community. Each water connection must be registered with the respective utility company and entered into a written utility agreement. Installation operators may register the water connection and execute the utility agreement on behalf of the company in case a new connection needs to be established.

Manufacturing companies need to handle not only rainwater and domestic wastewater but also operating sewage. Whether such operating sewage may be discharged into public waters or into a sewage plant depends on the water quality. Discharge of operating sewage usually requires a specific permit or approval by the respective authority. In many cases special sewage treatments (grease, oil or amalgam separators) will be required for the permit or approval, and the respective plants may require a building permit.

Waste

German companies have to comply with very strict waste disposal regulations, which aim to avoid and utilize waste in order to protect natural resources.

Producers of industrial/commercial waste are obliged to collect the following seven groups of waste separately: (i) paper, cardboard and carton, (ii) glass, (iii) plastics, (iv) metals, (v) wood, (vi) textiles and (vii) biowaste.

An exception to this obligation applies if the separate collection is technically impossible or economically unreasonable. However, the waste producer shall then direct its waste to an external mechanical pre-treatment installation, which provides high-quality recycling services.

Additionally, waste producers have various documentation duties, such as evidencing the separate collection and asking for a confirmation from the disposing company regarding the disposal paths.

Local laws in most German municipalities stipulate a general obligation for all waste producers to use and to dispose of their waste with the public waste disposal authority (usually organized by the respective municipality in form of a public or private company). However, commercial/industrial waste producers are usually exempted from such obligation and are free to choose a private waste disposal company. Residual waste (waste that cannot be utilized) needs to be handed over to the public waste disposal authority.

Specific regulations apply with respect to hazardous waste (waste which is toxic, pathogenic or explosive, i.e. solvents, acids, alkalis, pesticides, etc.) which is usually handled by the public waste disposal authority in case of smaller quantities. Regarding higher quantities, the waste producer itself is typically responsible for the proper disposal and required to commission a private or public disposal company.

B. Health and Safety

There is a high standard of health and safety regulations in place. Protection is guaranteed through federal and state governmental regulations and private accident insurances.

Regarding building regulations, Zoning Law (Bauplanungsrecht) regulates the purposes for which a building is used while Buildings Regulations Law (Bauordnungsrecht) determines planning law requirements.

Construction and operation of production site

Application for an official approval for the construction and operation of the production site, including building law (e.g. construction permit), environmental law (e.g. emission control permit), nature conservation law and water rights (approval procedures may take several months).

Constructional requirements to be fulfilled, such as: safety distance outside and inside of the building, sufficient access routes, traffic-safe entrances and exits, noise protection, fire prevention, lines of supply and drainage, adequate power supply.

Safety

Assessment of which EU or German laws, regulations, accident prevention rules and rules for safety and health protection (e.g. European machinery directive 2006/42/EG, German Product Safety Act, German Working Conditions Act, German Occupational Safety Act, Building regulations of the competent federal state) apply with regard to the production site, offices and the manufactured products.

Implementation of a health and security management and documentation system.

Implementation of the required industrial safety measures – workplaces have to be organized in such a way as to avoid as far as possible risks to life and physical and mental health.

Appointment of company physicians and occupational safety specialists.

In general, employees are covered by statutory accident insurance in Germany; this also applies to companies that are not located in Germany but employ employees in Germany (in this case: designation of a representative in Germany).

Assessment whether the production site should be certified (e.g. DIN EN ISO 12100, EN ISO 10218 parts 1 and 2, EN ISO 11161, EN 619).

C. Trade unions

There is a strong influence of trade unions in the German workforce. At business units with at least five employed persons, employees have the right to appoint a works council that represents their interests vis-à-vis the employer. The works council has certain participation rights including specific rights to obtain information, consultation, veto rights and co-determination rights. These rights are in particular related to personnel, social and economic matters that affect the enterprise.

Employees' rights and interests are in general safeguarded and represented vis-à-vis the employer by the works council (internal) and the trade unions (external).

In companies with at least five employees, a works council may be elected for a term of four years. The works council has information, supervision and consultation rights vis-à-vis the management of the company. In companies with more than twenty employees, the works council also has co-determination rights in relation to financial, personnel and social matters at the company.

For example, in case of a planned mass layoff in the course of restructuring measures, the employer must try to reach an agreement on a reconciliation of interests with the works council before implementing the measures (see below in detail under Section 5).

The employer and the works council can agree on works agreements, which are binding for all employees at the company. A works agreement contains general provisions with regard to the working conditions of the employees.

Prior to any dismissal of an employee, the employer must notify and hear the works council before issuing the notice of termination. Failure to hear the works council results in an invalid termination.

Works councils are not allowed to organize workers strikes or enforce wage increases. These rights are reserved for and within the responsibility of the relevant trade unions.

In Germany, the trade unions are very well organized, strong and influential and play a vital role in German politics. As of 2017, the most important labor organization, the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund) (DGB), represented close to six million employees.

The DGB hosts eight single trade unions for individual economic sectors such as metal (including automobile and machine building), electronics, textiles, steel, wood and synthetics industries.

Trade unions set the framework for working conditions, such as collective wage agreements, for whole sectors or single companies, defining wage levels and working time. Most collective agreements are negotiated at the branch or industry level.

Trade unions are also legally entitled to bargain collectively as well as to take legal action or to be taken to court. Further, trade unions have the right to call for a strike. During a strike, the employment contracts of the participants of the strike are suspended. That means that the striking employees are not violating their contractual obligation to perform their respective work. However, for the days they are on strike they are not paid. Striking employees who are trade union members receive a daily "strike money" amount from the competent trade union.

D. Industrial risk & insurance

Workers and employees have compulsory state accident insurance to cover the consequences of accidents at work.

Special insurance products can insure increasing cyber risks.

E. Commercial and Insolvency related risks related to suppliers

Political de-stabilization at German and EU level caused by overcoming regionalism (e.g. Brexit) and international issues (e.g. immigration crisis).

International trade conflict (e.g. introduction of import duties by the Trump administration).

Alignment of the business model with the increasing digitalization and automation.

Threats to the human resources market caused by skills shortage.

F. Defending your intellectual property

Intellectual Property

Implementation of an IP management and documentation system – overview on the manufacturer's IP, the duration of the registered rights, the scope of licenses and the results of third party IP researches, if any.

In terms of employment agreements, agreements with freelancers, managing directors and external developers, as well as cooperation agreements: Assurance that the IP to be developed for the manufacturer is owned by the manufacturer, or (exclusively) licensed by the manufacturer.

Filing of pre-emptive protective briefs before important trade fairs or before a new market entry if there is a risk that a competitor may assert its patent rights.

Patent litigation – bifurcated system in Germany:

- Civil courts (Zivilgericht) for patent infringements
- Federal Patent Court (Bundespatentamt) for the validity of patents

Patent litigation – EU Unitary Patent system (becoming operational during the course of 2018): Unified Patent Court having jurisdiction over the infringement and validity of both Unitary Patents and "classic" European patents.

Trade secrets / Know-how

Assurance that a high level for the protection of the trade secrets / know-how is agreed with employees, freelancers, managing directors and third parties.

If appropriate, agreement on contractual penalties for the case of the infringement of confidentiality.

Infringement by third parties

In case of defamation in the press, breach of confidentiality and other infringements: Taking measures such as warning letters to the third party, counterstatements in the press, information letters to customers, criminal complaints, injunctive relief, claim for damages, claim for abatement or removal and/or legal proceedings.

G. Competition law investigations

The German Federal Cartel Office (FCO) decides on competition related matters as an independent federal authority.

H. Tax investigations

Germany relies heavily on tax audits in order to ensure taxpayer discipline.

Audits of small businesses are carried out at random, whereas those for larger operations and for the local subsidiaries of foreign groups tend to be in regular intervals.

With some district variations, audits are usually conducted at intervals of four or five years, though not always with equal intensity for the entire period since the auditors' previous visit.

I. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Germany

Key compliance guideline policies are to be implemented as well as in case of investigation at the plant or at the company in relation to a possible criminal offense.

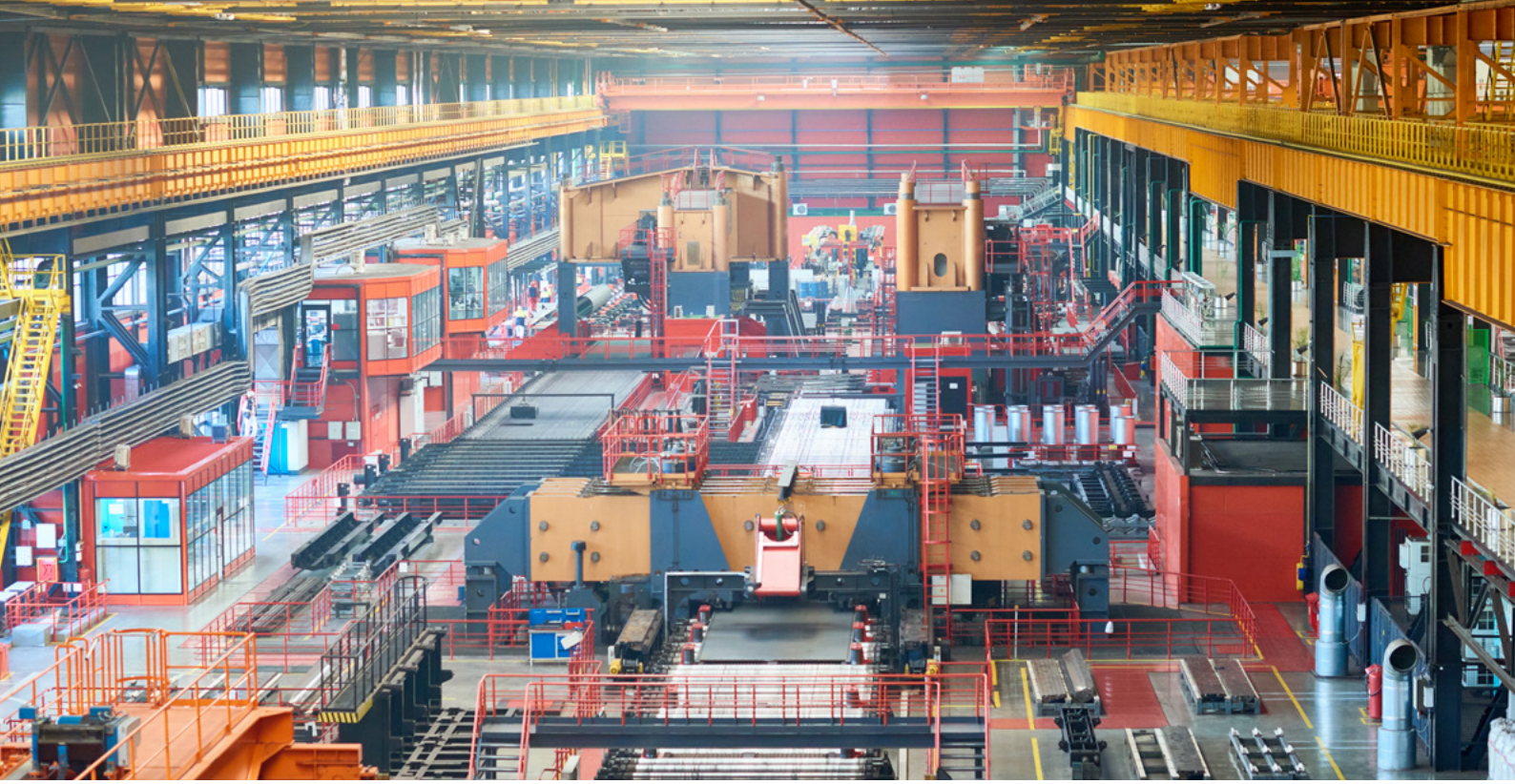
Little protection is offered for whistle-blowers.

Corporate criminal liability does not exist, as only natural persons can be punished under criminal law.

Whistleblowing rules in Germany

General information: As various judgments of the Federal Labor Court show, the exact scope of the obligation to register is unclear. For example:

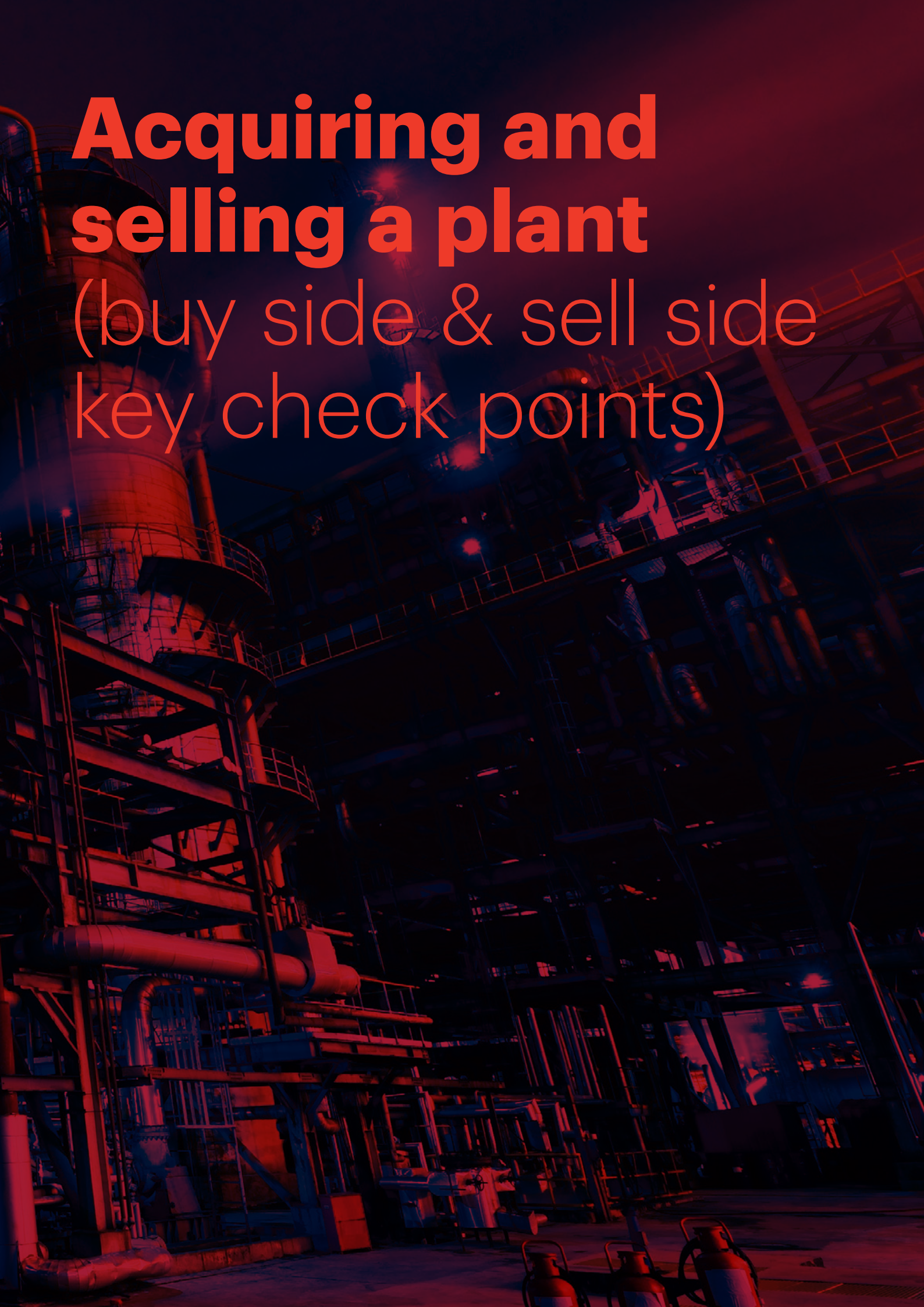
- The employee is only required to report if there is a risk of damage in his own area of responsibility and if there is a risk of recurrence.
- To prevent damage to the employer, the employee should notify the employer of any significant incident in the workplace.
- There is no obligation to notify if the report is unreasonable or self-incriminating for the employee.



Employment Law: Pursuant to German statutory law, the employer is not allowed to disadvantage the employee if the employee exercises his rights in a permissible manner.

BaFin and protection of workers: In accordance with sec. 4d of the German Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz, FinDAG), there is protection for whistleblowing. Section 6 of the regulation stipulates that employees who use the BaFin whistleblowing system must not be held responsible under labor law or criminal law and are not liable for damages. However, in case of intentional or grossly negligent reports to BaFin, depending on the seriousness of the violations, labor law sanctions such as extraordinary dismissal, ordinary dismissal or even a warning are possible.

Acquiring and selling a plant (buy side & sell side key check points)



A. Share deals & Asset deals

Investments in German companies can be structured as share or asset deal. In many cases the deal structure is predominantly driven by tax considerations. Both types of transactions differ significantly in terms of their economic and legal effects.

In case of a share deal, the purchaser acquires all or part of the shares in the target company from one or several sellers. The purchaser automatically becomes the owner/shareholder of the legal entity including all of the target company's assets, rights, claims and liabilities. Further, all existing contracts that have been entered into with the target company validly transfer to the purchaser.

In an asset deal the purchaser acquires specific assets, such as real estate, production facilities, machines, computers, licenses. It should be determined whether the purchase allows the continuation of the business, i.e. which assets are necessary for the business and where those assets are located. Trade marks, patents and other forms of intellectual property are often held by a holding company, even if they are essential for the business of a subsidiary.

B. Real Estate

Key risks to verify, in particular in relation to title, rights of way, etc.

C. Third party suretyship on the plant

For financing purposes, a property may be charged with encumbrances, in particular land charges (Grundschuld) and mortgages (Hypothek) which need to be registered in the land register.

Also, the property may be encumbered with certain rights in favor of third parties, e.g. right of way, usage right etc.

In general, real estate is transferred free of any encumbrances. Therefore, mortgages and/or land charges should be released in the context of an acquisition.

D. Employment & trade unions

According to German law, a lease agreement relating to a property automatically passes over to the new landlord after the transfer of ownership in the property has been completed without further action.

Role of the workers council and trade unions in the context of an acquisition/divestment

In Germany, works councils have information and co-determination rights that are triggered in case of so-called "operational changes". This term encompasses all measures that affect the operational organization and identity, from a close down to relocation but also changes of business objectives or fundamental changes to production methods. Hence, in case of a sale of the manufacturing site, e.g. by way of an asset deal, the seller must inform the works council on the envisaged transaction.

Experience shows that in case of a timely and transparent information of the works council with respect to the contemplated transaction, the seller can expect a smooth cooperation with the works council hereby increasing transaction security.

In case of an envisaged sale of the manufacturing site by way of an asset deal, the seller is further obliged to inform the employees of the target company comprehensively and correctly in written form about the contemplated transaction.

The issuance of this information triggers the one-month period during which the employees are entitled to object to being transferred to the buyer of the manufacturing site. It is important that the seller strictly complies with this information obligation.

Otherwise, the seller risks that the employees have never been validly transferred to the buyer by way of the asset deal with the consequence that the seller has to pay their salaries with retrospective effect.

Trade unions do not have any rights in connection with a contemplated sale of a manufacturing site. However, trade unions are free to assist the works council if the sale of the manufacturing site does not seem to be in the interest of the employees.

Trade unions are very strong in Germany, and they are not reluctant to make great use of their strong influence and power – also in politics and in the media.

E. Specifics for distressed assets

Acquiring distressed assets poses certain risks. There will be reasons for the distress. Therefore, it is crucial to assess to what extent those reasons prevail and to what extent the buyer will be able to overcome them.

If there is a subsequent insolvency, an insolvency administrator will scrutinize any pre-insolvency deal involving the sale of all or substantially all of the assets for example on grounds such as that the sale was below value.

Therefore, it is important that such a deal is backed up by a dependable appraisal of the sold assets. This will not create absolute security, but it gives room to argue that the transaction was fair and at arm's length.

F. Tax risks

Key risks to identify and statute of limitation attached to tax liabilities.

G. Intellectual Property & Technology acquisition

Intellectual Property:

Assessment of the ownership and transferability of the relevant IP rights.

Assessment whether third party rights are infringed by the transfer of IP rights.

Assurance that the IP rights are not pledged or otherwise encumbered.

Acquisition of all required declarations (e.g. concerning the transfer of employee invention rights to the employer, concerning the change of the registered owner at the competent patent and trademark office) for the transfer of IP rights.

In case of an acquisition of IP rights, the acquisition agreement should contain appropriate warranty clauses.

Trade secrets / Know-how:

It has to be ensured that trade secrets and know-how are kept secret during and after the acquisition.

Closing down – moving away manufacturing from Germany

General things to be considered

- Consider regulatory environment in the new country for business opening.
- Consider regulatory restrictions in leaving former country.
- Consider general economic and political environment.
- Consider legal aspects and related financial implications for the company with respect to the termination of the employees.
- To be decided whether current production sites/factories should be sold as a whole or whether certain parts can and/or should be sold individually.
- In case of leftover raw material to be decided whether it should be sold or transported to new production sites/ factories and at what cost.
- Consider what costs would be associated with the relocation/establishment of a new production site/factory.
- Consider what would be the best timing for the termination of production from a tax law/labor law perspective and whether there are still remaining taxation issues that should be considered.
- Consider which effects the termination of production in Germany could have in terms of image and brand/marketing of the company on a local/national/international scale.
- Consider possible consequences that the termination of production can have for the political and economic relations of the company both on a national and/or international level.
- Consider what changes a relocation could cause with respect to possible export/import regulations and/or customs charges.
- Consider potential differences between the production at the new location and the production at the previous location (Germany) and whether the new location offers sufficient supply of qualified workers.
- Consider the timeframe for delivery at the new location and whether this would be (permanently) compatible with client expectations (i.e. in terms of flexibility).

Employment law perspective

In case it is envisaged to close down a manufacturing site in Germany or to relocate the manufacturing from Germany to another (low cost) country, the employer must adhere to the legal requirements set out in the German Works Constitution Act (Betriebsverfassungsgesetz, BertVG) and the German Protection against Unfair Dismissal Act (Kündigungsschutzgesetz, KSchG).

As a close down or relocation of a manufacturing site (technical term: operational change) results in complete or partial reduction of the workforce (i.e. collective dismissal), the works council has information and co-determination rights that the employer must take into account.

First, the employer must promptly, comprehensively and in detail inform the works council about the envisaged operational change. Second, the employer must try to agree on a reconciliation of interests with the works council before being able to execute the operational change.

The purpose of reconciliation of interest negotiations is to find a compromise that accommodates both, the interests of the employer and the interests of the employees. The goal is to reach an agreement on the concrete implementation of the envisaged operational change.

The employer has to make any effort to agree on a reconciliation of interest agreement with the works council before actually implementing the operational change (i.e. executing the collective dismissals and close down or relocate the manufacturing site).

Usually negotiations about a reconciliation of interest agreement with the works council are accompanied by negotiations on a social plan providing for compensation payments for employees to be dismissed in the course of the close down or relocation.

If the employer and works council fail to find an agreement on reconciliation of interests, the parties must at least call the conciliation board before declaring that the negotiations have ultimately failed.

The conciliation board is an arbitration tribunal with arbitrators chosen by the employer and the works council. The conciliation board holds hearings and promotes further negotiation between the parties with the goal of finding an agreement that accommodates both interests.

During these negotiations, the employer only has to demonstrate a sincere effort to reach an agreement with the works council. Once the employer has sufficiently fulfilled this obligation but an agreement can still not be reached, the employer may declare that the negotiations have ultimately failed.

After such declaration the employer can directly proceed with the implementation of the operational change.

If the works council is of the opinion that the employer did not properly and seriously conduct the negotiations with the works council, it can try to prevent the planned operational change by obtaining a preliminary injunction from the labor court, which could – if successful – prevent the close down, or relocation process.

As such a preliminary injunction may significantly delay the implementation of the operational change, the employer should take a thorough, transparent and professional approach from the beginning of the negotiations.

If the employer dismisses an employee without, or in violation of the reconciliation of interests, the individual employee can sue the employer for compensation.

The claimed compensation may amount up to 18 monthly gross salaries depending on the age and seniority of the respective employee. Under certain circumstances, this compensation has to be paid in addition to severance payments resulting from a social plan.

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