

Doing Business in Europe

SWEET & MAXWELL



THOMSON REUTERS

Published in 2015 by Thomson Reuters (Professional) UK Limited trading as Sweet & Maxwell, Friars House, 160 Blackfriars Road, London, SE1 8EZ (Registered in England & Wales, Company No.1679046. Registered Office and address for service: 2nd floor, Aldgate House, 33 Aldgate High Street, London, EC3N 1DL).

For further information on our products and services, visit <http://www.sweetandmaxwell.co.uk>
Printed in Great Britain by Hobbs the Printers

No natural forests were destroyed to make this product, only naturally farmed timber was used and replanted

All rights reserved. UK statutory material in this publication is acknowledged as Crown Copyright. No part of publication may be reproduced or transmitted, in any form, or by any means, or stored in any retrieval system of any nature, without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material, including permission to reproduce extracts in other published works, shall be made to the publishers. Full acknowledgment of the author, publisher and source must be given.

European Union material in this publication is acknowledged as © European Union, 1998–2015. Only EU legislation published in the electronic version of the Official Journal of the European Union is deemed authentic.

Judgments and decisions originally published to the HUDOC Database (<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/>).

Judgments and decisions originally published to the European Patent Office Website (<http://www.epo.org/>).

978-0-86325-1290

© 2015 Thomson Reuters (Professional) UK Limited

FORMS OF DOING BUSINESS UNDER THE COMMERCIAL ACT**[¶BUL-250] General**

The forms of doing business under the Commercial Act (CA) are generally the different types of traders. The trader can be a sole trader, a public undertaking, or a commercial company. The CA introduces also special rules regarding associations of traders—the consortia and the holding.

The type of trader that is most common and most significant in practice is the commercial company. Commercial companies, in accordance with the definition of art.63 of the CA, are associations of two or more persons for the purpose of performing commercial transactions with joint property. In some cases, envisaged under the law, only one person may incorporate a commercial company. The commercial companies are legal entities.

The types of commercial companies are explicitly enumerated in the Commercial Act. This section will provide a brief overview regarding the nature of each type of commercial company and its main characteristics.

All traders (sole traders, public undertakings and commercial companies) must be registered in the national Commercial Register. When the Commercial Register was initially created after the democratic changes, it was administered by the district courts and more specifically by a specialised department thereof—the company department. Back then each district court maintained a separate register. With the adoption of the Commercial Register Act in 2006 the Commercial Register was placed in the competence of a government agency—the Registry Agency of the Ministry of Justice. However, the new Commercial Register at the Registry Agency became operative in the beginning of 2008, when it began to gradually replace the old court registers. In order to provide for the transition, every trader had to re-register with the Registry Agency by the end of 2011. Currently, the Commercial Register is the only one nationwide and functions also online, providing free access to a vast amount of company information. One of the recent amendments to the functioning of the Commercial Register is that the online access to a significant part of the company information is available only to users with electronic signatures, in order to obviate the negative effects of anonymous research of companies.

[¶BUL-275] Limited liability company

The limited liability company is one of the most popular commercial company types in Bulgaria. It is regulated by art.113 et seq. of the Commercial Act. As a rule two or more persons may incorporate this type of company. These persons (shareholders that may be natural persons or legal entities) are responsible for the obligations of the company up to the value of their shareholding. This feature is the main advantage of the limited liability company: it allows the shareholders to limit the risk ensuing from doing business. The limited liability company is a legal entity, i.e. the limited liability company and the shareholder are different persons. The shareholder's personal property is separate from the property of the limited liability company, and for example, generally does not fall within the legal reach of the company's creditors. Bulgarian law does not recognise the need for the shareholder to bear the liability for the company's obligations with his/her own property.

The limited liability company is a “capital” company. By relatively recent amendment to art.117 of the CA, the minimum amount of the capital was reduced from 500 BGN to 2 BGN (approximately €1). The announced legal reason behind the amendment was to facilitate the establishment of new companies during the “financial crisis”. The capital is divided into shares, each of which must be at least 1 BGN.

The managing bodies of the limited liability company are the General Meeting of the shareholders and the Manager/Managers of the company. The General Meeting consists of all shareholders. The shareholder has as many votes as the number of the shares held in the limited liability company’s capital (unless otherwise envisaged in the Articles of Association). The General Meeting is competent to:

- amend and supplement the Articles of Association;
- associate and expel shareholders;
- give consent for the transfer of share/s in the company to a new member;
- approve the annual report and balance sheet;
- distribute the profits and decide on their payment;
- make decisions regarding the increase or decrease of the capital;
- elect the Manager, determine his/her remuneration and release him/her from responsibility;
- decide on opening and closing branches and participations in other companies;
- decide on the acquisition and transfer of real estate and rights over them;
- decide on additional instalments to be made by the shareholders, etc.

A most essential and important characteristic of the limited liability company is the regime regarding the transfer of ownership over the shares. It defines this type of company as relatively closed for the entry of new shareholders. This regime envisages that the shareholders are entitled to transfer freely their own share/s to other shareholders. However, in the case where a shareholder intends to transfer a share/s to a third party who is not a shareholder, the consent of the General Meeting is required.

A majority of 50 per cent of the capital plus one share is the general requirement for the valid adoption of most of the above decisions. However, decisions regarding capital increase and decrease need to be adopted unanimously, and other decisions (additional

- amounts received from the mandatory pension, social and health insurance;
- interest on deposits in local commercial banks, branches of foreign banks, etc.;
- compensation and other similar payments in case of death, physical injury, professional disease, compensations under certain insurance policies, etc.;
- interest on receivables adjudged under court decisions, as well as the adjudged court expenses;
- monetary and non-monetary incomes from social aid, as well as compensation and payments to unemployed people;
- scholarships in favour of local natural persons for education in Bulgaria and abroad;
- subsidies received from social funds and organisations;
- family allowances, compensation and subsidies for children, received on the grounds of a legislative act, alimonies received in accordance with the Family Code;
- prizes and winnings received from the state lottery, gambling, games of fortune, etc.

The law explicitly envisages that the amount received from the sale or barter of property acquired via inheritance or donation shall not be considered an income. Furthermore, the incomes received by natural persons on the grounds of concluded lease or rent agreements with agricultural land are exempt from tax.

The TIIA introduces a “flat tax” system which applies a constant tax rate, regardless of the amount of the income, contrary to the previously used “progressive taxes”. The general rule says that the tax rate is 10 per cent (15 per cent for the sole traders) of the annual aggregate taxable amount. The annual aggregate taxable amount is the annual income from which are deducted tax reliefs or operating expenses (if applicable by the law). Social security contributions are also deducted from the aggregate amount.

In this connection, the gross incomes are levied with the relevant per cent of the social security contributions. The income which is subject to assessment with the percentage of the social security contributions consists of all of the remunerations and payments derived from labour activity. As a conclusion, we may say that the gross income is subject to taxation with the above tax rates and is also subject to taxation with social security contributions.

Fund	Time period	Ratio / Per cent to be paid
General Disease and maternity	From 1.1.2009 onwards	60/40

Pension	From 1.1.2011 onwards	for persons born before 1.1.1960 and certain categories of employees:	for persons born after 31.12.1959
		7.9% by the secured person; 17.8%—by the self-secured person; 9.9% by the securing person; 12.9% for certain categories of employees.	5.7% by the secured person; 12.8%—by the self-secured person; 7.1% by the securing person; 10.1% for certain categories of employees.
Employment Injury and occupational Disease	100% by the securer (except for maritime employees)		

Persons that occupy a liberal profession, craftsmen, sole traders, owners and partners in commercial companies, individuals that are members of unincorporated associations, registered agricultural producers and tobacco producers bear 100% of their social security installments.

Both the employer and the employee are obliged to pay the relevant share of the social security contribution at their own expense. We shall say here that where there is a labour contract signed, actually the portion of the employee’s social security contributions are deducted by the employer from the employee’s salary. Thus, the employee does not need to pay them himself/herself. The portion of the employee is paid physically by the employer, but at the expense of the employee.

We shall note that the Social Security Code stipulates that there is a maximum amount of the monthly income that is subject to social security contributions’ assessment. This maximum amount is determined each calendar year with Budget of the State Social Security Act. For the year 2014 the maximum amount is determined at 2,400 BGN. Monthly incomes over this maximum amount will not be subject to assessment with social security contributions. Thus, as we mentioned above, the final financial result will be different for the different individuals. This will be most probably subject to calculations for each individual that is subject to taxation under the TIIA.

¶BUL-650] Taxation under the Corporate Incomes Taxation Act

This law regulates the taxation of:

- the profit accruing to resident legal persons;

- the profit accruing to resident legal persons which are not merchants, including the organisations of the religious denominations, from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property;
- the profit accruing to non-resident legal persons from a permanent establishment in the Republic of Bulgaria and the profit from transactions with their property from such an establishment;
- the income, as specified in this Act, accruing to resident and non-resident legal persons from a source in the Republic of Bulgaria;
- the expenses as specified in Part Four of the Act;
- the activities of organisers of games of chance;
- the income accruing to public-financed enterprises from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property; and
- the vessels operation activity of persons that carry out maritime merchant shipping.

It is worth noting that the former CITA excluded from its scope profit and income of local legal entities with annual turnover of under 50,000 BGN and performing certain activities. The present CITA (entered into force as of January 1, 2007), in compliance with the new TIIA, applies to all legal entities, regardless of the amount of their turnover.

The profit is levied with a corporate tax. From 2007 (according to the new CITA) the tax rates are as follows:

- corporate tax — 10 per cent;
- tax on expenses (which are specifically envisaged in the law) — 10 per cent;
- withholding tax — 5–10 per cent; and
- alternative taxes — 2–15 per cent, depending on the activity and the subject of taxation.

Corporate tax

This is a general tax and it applies to the profits and incomes falling in the scope of the law, except those explicitly levied with other types of taxes.

As Chapter 5 of the law states: “Tax financial result” shall be the accounting financial result adjusted according to the procedure established by this Act. There are two types of this result:

- the positive tax financial result, which shall be considered a tax profit;
- the negative tax financial result, which shall be considered a tax loss.

Pursuant to art.19, the taxable amount for assessment of the corporate tax shall be the tax profit.

Tax on expenses

A tax on expenses shall be levied on the following documented expenses:

- any business entertainment expenses;

- any expenses on fringe benefits provided in kind to factory and office workers and to persons hired under a management and control contracts (hired persons); the expenses on fringe benefits provided in kind shall furthermore include:
 - (1) the expenses on contributions (premiums) for additional voluntary retirement and health insurance, and life assurance;
 - (2) the expenses on food vouchers over 60 BGN;
- the expenses related to operation of means of transport, where used to service management operations.

Withholding tax

A withholding tax shall be levied on any dividends and shares in a liquidation surplus, as distributed (apportioned) by any local legal entities in favour of:

- any foreign legal entities, with the exception of the cases where the dividends accrue to a foreign legal entity through a permanent establishment in the country; and
- any local legal entities which are not merchants, including municipalities.

The tax shall be final and shall be withheld by the local legal entities distributing dividends or shares in a liquidation surplus. The tax rate shall be 5 per cent.

A withholding tax shall be levied also on the income of foreign entities which has its source inside the country, however has not been realised through a permanent establishment in Bulgaria. The tax rate shall be 10 per cent.

Alternative taxes

Subjects to alternative taxes are:

- the activity of organising games of chance;
- the income accruing to public-financed enterprises from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property; and
- the vessels operation activity.

The alternative tax for gambling is 15 per cent of the amount of the received stakes. A licensed telecommunication operator, where the value of the bet consists in the increased charge for a telephone or another telecommunication link, is obliged to deduct the amount of the tax from the due remuneration and to pay it to the budget on behalf of the provider of the services. The tax is final.

Pursuant to art.245, the tax rate is defined by a fixed amount as follows:

- in respect of a gambling slot-machine, respectively, each players' place at such a machine: BGN 500 per quarter;
- in respect of a roulette in a casino per gambling table: BGN 22,000 per quarter for each device; and;
- in respect of any other gambling device in a casino: BGN 5,000 per quarter for each device.

State (budget) enterprises are levied with an alternative final tax to the amount of 3 per cent (and 2 per cent for the budget municipal enterprises) on the basis of their incomes, derived from the performed commercial activities.

The persons carrying out maritime merchant shipping which simultaneously fulfill certain conditions specified in the law are levied with alternative tax the rate of which is 10 per cent.

It is worth noting that the new taxation regime is optional, i.e. the commercial companies performing the above activity have the right to choose between this regime and the common one — taxation of the profit with the corporate tax to the amount of 10 per cent. This regime envisages that instead of assessment of corporate tax, these commercial companies will be levied with a tax on the basis of the net burden of the ships for the days during which they are in exploitation. The amount of the basis subject to taxation will be determined for the days in exploitation for each calendar month as follows:

<i>Net burden of the ship</i>	<i>Calculation of the tax basis subject to taxation</i>	<i>Tax rate</i>
Up to 1,000 tons	3.50 BGN for each 100 tons	10%
From 1,001 to 10,000 tons	35 BGN + 3 BGN for each 100 tons over the initial 1,000 tons	10%
From 10,001 to 25,000 tons	305 BGN + 2.5 BGN for each 100 tons over the initial 10,000 tons	10%
Over 25,000 tons	680 BGN + 1 BGN for each 100 tons over the initial 25,000 tons	10%

The tax rate assessed over the so calculated tax basis amounts to 10 per cent. The amount of the tax rate is determined by the provision of art.258 of the CITA. Pursuant to

hours. The employer is entitled, when necessary, to prolong the working time on some of the working days. However, he/she may do so only with an explicit written order and is further obliged to compensate the employees by means of working time reduction on other days. A consultation with representatives of the workers syndicates is needed and the employer is obliged to notify in advance the Labour Inspectorate of the extension of the working time. In accordance with the mandatory regulations of the Labour Code, the duration of the extended working time cannot exceed 10 hours, i.e. cannot exceed the normal duration of the working time by more than two hours. In the case of diminished working time, the prolonged working time cannot exceed the established diminished working time by more than one hour. For example, if the diminished working time is fixed at seven hours, then the prolonged working time cannot exceed eight hours. Diminished working time, in accordance with the regulation of art.137 of the Labour Code, is established for the following employees:

- employees working under harmful working conditions or performing work under specific conditions on the grounds of a decision adopted by the Council of Ministers; and
- employees under the legal age of 18.

Furthermore, in accordance with the provision of art.136a, para.2 of the Labour Code, the prolonged working time per week cannot exceed 48 hours in total and in the case of a diminished working time, the prolonged working time per week cannot exceed 40 hours. The employer is obliged to maintain a log and to enter into it the extension and compensation of working time. Extension of working time is allowed for no more than 60 working days per calendar year, and for no more than 20 consecutive working days. The employer is obliged to compensate each extended working day within a four-month term. If the employer does not observe this term, the employee is entitled to determine by himself/herself the time of compensation, provided they inform the employer at least two weeks in advance. If the labour relationship is terminated before this compensation, the prolonged working hours shall be paid as an overtime work.

¶BUL-1075] Part-time working

The employer and the employee may agree that the employee shall work only for a part of the full-time working time established under the Labour Code. They will therefore agree a part-time working time and shall determine the duration and the distribution of the working time. The employer is entitled, in the case of a decrease of work in the enterprise, to establish a part-time working hours for a period of three months in one calendar year. The duration of the part-time working hours in this case cannot be less than half of the normal duration established under the Labour Code.

¶BUL-1100] Night labour

The normal duration of the weekly working time at night is up to 35 hours in the case of a five-day working week. The normal duration of night working time is up to seven hours per night. Night labour shall be considered to be work performed between 10pm and 6am. For employees under the age of 18, night labour shall be considered to be work performed between 8pm and 6am.

The employer is under obligation to provide hot food and drinks for employees to assist the employees in the easier performance of their working obligations during the night. Regardless of the envisaged obligations, “night labour” is prohibited for certain categories of employees. These categories include the following:

- employees under the age of 18. Such employees cannot work between 8pm and 6am in accordance with the above written definition for “night labour”;
- pregnant employees (including employees into an advanced in-vitro procedure);
- mothers with children under the age of six, and mothers who take care of disabled children. However, this prohibition shall not apply if the mother has given written consent to override this prohibition;
- employees who are transferred to a more appropriate job because of health reasons. However, this prohibition can be also evaded with the consent of the employee and provided the night labour does not have negative impact on his/her health, which shall be concluded by the health authorities;
- employees who continue education, unless they have expressed their consent.

The employer is obliged to pay additional remuneration to the employee for night labour. This additional remuneration shall be agreed between the employer and the employee. The additional remuneration cannot be lower than that established by the Council of Ministers.

[¶BUL-1125] Work in shifts

When the nature of the work requires this, work may be organised in shifts. A shift is considered mixed when it combines both daytime and night labour. A mixed shift with more than four hours night labour shall be considered a night shift. A mixed shift with less than four hours night labour shall be considered a daytime shift. The distribution of the shifts shall be determined by the internal rules of the enterprise. Work during two consecutive shifts is prohibited. Shifts of employees in education shall be appointed in accordance with the educational organisation.

[¶BUL-1150] Overtime work

Overtime work is regulated in arts 143 et seq. of the Labour Code. In accordance with the definition under the Code, overtime work shall be considered to be work which is performed by the employee in addition (before and/or after) to the established working time on the grounds of instruction/order by the employer or on the grounds of the knowledge of an employer who does not object to this work. Therefore, overtime labour can be described as follows:

- (1) the employee works before or after their working time or at any other time which differs from the established working time;
- (2) the work is performed by the employee on the grounds of a direct instruction/order by the employer or if there was no such instruction/order, the employer knows that the employee is working and has no objection to this.

Pursuant to art.143, para.2 of the Labour Code, overtime work is prohibited. There are of course certain exceptions to the prohibition, which are enumerated in art.144 of the Labour Code. Overtime work is permissible only as an exception in the following cases:

- for the performance of work which is in connection with the defence of the country;
- for the avoidance of and to fight against natural and public disasters and dangers;
- for the performance of urgent steps and works aimed at reconstruction of the normal water supply, energy supply, heating, drainage, transport and telecommunication coverage and network, as well as for rendering medical aid;
- for the performance of urgent reconstruction works in working places, as well as for the performance of reconstruction works regarding machinery and other equipment;
- for the performance of seasonal work;
- for the completion of work which has already commenced, which cannot be performed in normal working time.

The duration of overtime work for one employee cannot exceed 150 hours in total during one calendar year. The duration of overtime work cannot exceed:

- 30 hours daytime or 20 hours night labour per 1 calendar month;
- 6 hours daytime or 4 hours night labour per 1 calendar week;
- 3 hours daytime or 2 hours night labour per 2 consecutive working days.

The above limitations do not apply for the performance of work which is in connection with the defence of the country or urgent works aimed at reconstructing the normal water supply, energy supply, heating, drainage, transport and telecommunication coverage and network, as well as for rendering medical aid.

Pursuant to the regulation of art.147 of the Labour Code, overtime work is prohibited for the following individuals:

- employees under the age of 18;
- pregnant employees (including employees into an advanced in-vitro procedure);
- mothers with children under the age of six, as well as mothers who take care of disabled children. However, this prohibition shall not apply if the mother has given written consent to override this prohibition;
- employees who are transferred to a more appropriate job because of health reasons. However, this prohibition can be also evaded with the consent of the employee and provided the night labour does not have negative impact on his/her health, which shall be concluded by the health authorities;
- employees who are in continuing education, unless they have expressed their consent.

The employee has the right to refuse overtime work if the requirements of the Labour Code or other legislative act have not been observed. The employer is obliged to keep a log of the overtime work of employees. Overtime work shall be reported before the Labour Inspectorate every six months.

Overtime work shall be paid by the employer at an increased amount of remuneration. The amount of the increased remuneration shall be agreed between the employer and the employee and shall be increased by no less than 50 per cent for overtime work during working days, 75 per cent for work on holidays and 100 per cent for work on public holidays.

LEAVE

[¶BUL-1175] Paid annual leave

Every employee has the right to a paid annual leave. Employees have the right to use his/her paid leave once he/she has acquired eight months of service. These eight months of service should be acquired only when the employee is commencing their first job; it is not necessary for the employee to acquire eight months of service again when changing their job. The length of the annual paid leave should be no less than 20 working days. The employees have the right to additional paid annual leave when working in harmful or under specific conditions, where additional paid leave shall be no less than five working days. The employer and the employee are entitled to agree by mutual consent a longer annual paid leave. The employer must allow annual paid leave to be used by the employee at once or in parts and a schedule shall be created in the beginning of the year for the leave of all employees. If the employer does not abide by the schedule, the employee may take his/her leave at any time giving a further two-week notice. The Labour Code stipulates a 2-year prescription term for the use of this right. For example an employee can use his/her paid leave for 2014 by the end of 2016.

[¶BUL-1200] Unpaid leave

The employer is entitled to give permission to the employee to take unpaid leave, regardless of whether the employee has used his/her paid annual leave and regardless of their length of service. The employer will decide whether to permit unpaid annual leave on the grounds of a request filed by the employee. Unpaid leave, which cannot exceed 30 working days for a calendar year, is considered as a length of service. The days of the unpaid leave exceeding 30 working days shall be considered as a length of service only if this is envisaged under the Labour Code or under another law or act issued by the Council of Ministers. The employer is however obliged to grant a one-year unpaid leave to any employee working for an institution of the EU, UN or OSCE.

[¶BUL-1225] Labour discipline

Every employer is entitled to issue internal rules which specify the exact rights and obligations of the employees in accordance with the content of the labour relationship. These internal rules also regulate the organisation of the labour process in the enterprise taking into account the specifics of the relevant work. Pursuant to art.186 of the Labour Code, the non-performance of the labour obligations by the employee constitutes a breach of the labour discipline. The employer is entitled to impose discipline penalties regardless of the civil, administrative or penal responsibility if such responsibilities are applicable in the relevant case. These breaches of the labour relations are enumerated in art.187 of the Labour Code as follows:

- the employee does not observe the established working time;
- the employee comes to work in a condition which does not allow him/her to perform the labour obligations and tasks assigned by the employer;
- the employee does not perform his/her labour obligations and the tasks assigned by the employer;

- the invention has not been used for a period of four years following the filing of the application for registration or at least three years following the issuance of the patent (the longer term applies);
- the invention has not been used to the adequate extent within the above-mentioned terms for meeting the needs of the national market, unless the inventor succeeds to prove reasonable grounds for this;
- when the public interest imposes this even without any negotiation made; or
- when an invention is subject to a later patent certificate and falls within the scope of an earlier patent certificate, but represents important technical progress with substantial economic significance, and the holder of the earlier patent certificate has denied conclusion of a fair licensing agreement (the earlier patent holder has a right of a cross-license with fair terms in this case).

Utility Models

Utility models which are new, have an inventive step and are subject to industrial application, could be registered. Pursuant to protection, pursuant to the Patent Act, the above requirements shall have the following meaning:

- novelty—the invention shall be considered new in case that it is not a part of the state of the art. The “state of the art” includes within its scope everything which is made known to the public by means of use in the Republic of Bulgaria through written or oral description, or in any other way, anywhere in the world, before the date of filing of the patent application. The “state of the art” shall further include the contents of all applications for registration of a patent, filed with an earlier date. These may be national or European and international applications (in which Bulgaria is included as a designated country) for registration of a patent with an earlier date;
- inventive step—this means that the invention cannot be easily realized by a person with ordinary skills in the field, taking into account the state of the art as described above;
- industrial application—means that the subject of the utility model could be produced or used repeatedly in any field of the industry and the agriculture.

The registration of the utility model has a validity of four years, following the date of filing of the application for registration and can be extended with no more than two three-year periods. The total maximum period of validity shall be 10 years.

Protection of Industrial and Intellectual Property Rights

The possible means for protection of industrial and intellectual property rights include the following options:

- civil protection: it could be accomplished by bringing an action before the court. The rightholder may claim cessation of the infringement, damages, as well as destruction of the infringing goods because of violation of his/her rights.
- administrative protection: it is in the competence of state authorities, mainly of the Patent Office and the Ministry of Culture. In case of violation of the industrial

and intellectual property rights the state officials are entitled to impose administrative penalties for each violation.

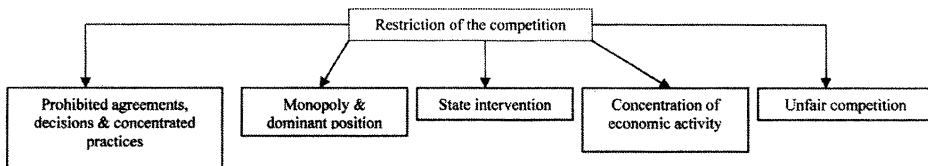
criminal protection: the violation of intellectual property rights could be qualified as a crime according to the Bulgarian legislation and the violator can be subject to criminal liability.

COMPETITION LAW

[¶BUL-1525] Introduction

The first Bulgarian Competition Protection Act (the CPA) was adopted in 1991 and promulgated in the *State Gazette*, issue 39, May 17, 1991, later on repealed by the CPA from 1998, promulgated in the *State Gazette*, issue 52, May 8, 1998. This second act was adopted as a comparatively new one and envisaged rules that the undertakings and the participants on the Bulgarian market are obliged to observe. The law was adopted in accordance with the requirements of the European Union's legislation, and there were difficulties in practice with the application of the law. These difficulties arise from the fact that the CPA was adopted as a modern Act, and the participants on the market were not ready to meet all of the CPA's requirements. The new CPA (in force from December 2, 2008) envisages a different procedure and (with few exceptions) maintains the hypotheses of unfair competition.

The regulations of the CPA regarding the restriction of competition may be illustrated with the following table:



UNFAIR COMPETITION

[¶BUL-1550] General

Unfair competition is regulated in c.7 of the CPA. The different cases of unfair competition are distinguished very clearly. In addition, a general prohibition of unfair competition is contained in the regulation of art.29 of the CPA, which states that any action or omission in the performance of economic activities which contravenes good trade practice and impairs or may impair the interests of competitors in their mutual relations or in their relations with the consumers shall be prohibited. Article 29 of the CPA represents the common prohibition of unfair competition and the following eight articles of the law (arts 30–37) describe the specific cases of unfair competition prohibited by law.

The following paragraphs provide a brief overview of the different cases of unfair competition.

the law. The courts perform the jurisdiction. Pursuant to art.119 of the Constitution, the court system includes the following courts: the Supreme Cassation Court, the Supreme Administrative Court, courts of appeal, district courts, martial courts, and regional courts. The Supreme Court Council determines the number, the court regions, and the headquarters of the regional courts, the district courts and the courts of appeal.

[¶BUL-2075] Regional court

The regional court is the basic first-instance court in the court system for criminal and civil trials (cases). The jurisdiction of the regional court comprises all civil lawsuits which are not under the jurisdiction of the district court as a first-instance court. Therefore, the regional court is competent to hear and resolve on the following lawsuits:

- civil and commercial lawsuits with a material interest of the claim under 25,000 BGN;
- alimony claims;
- claims for protection of rights over real estates (ownership and possessory actions) with a material interest of the claim under 50,000 BGN;
- labour lawsuits, i.e. claims under the Labour Code; and
- claims for receivables under deficit deeds.

If a lawsuit which is within the competence of the regional court is resolved, and a court decision is issued by the district court, this shall not constitute a legal ground for revocation of the decision. The reason for this is that the judges from the district court have a longer length of service and are therefore considered more experienced. On the contrary, it is not admissible for a lawsuit which is within the competence of the district court to be resolved by the regional court. Such a decision will be subject to appeal and most probably will be revoked.

[¶BUL-2100] District court

The district court is competent to hear as a first-instance the following civil cases:

- civil and commercial lawsuits with a material interest of the claim exceeding 25,000 BGN;
- claims to establish or disavow filiation, to terminate adoption, any actions for interdiction or for vacation of interdiction;
- claims for ownership and other rights in rem to an immovable with a cost of action exceeding 50,000 BGN;
- claims to establish inadmissibility or nullity of a recording, as well as for non-existence of a recorded circumstance, where so provided for by law; and
- other claims when envisaged under other legislative acts.

[¶BUL-2125] Administrative Court

The Administrative Court acts as a first instance to all administrative cases, except those in the competence of the Supreme Administrative Court. It also acts as a cassation instance for cases for appealing infringement acts for imposing fines.

[¶BUL-2150] Specialised Penal Court

With the amendments of the Judicial System Act from January 2011 a new court has been created. Its jurisdiction includes cases of high social hazard. The Specialised Penal Court is made equal in standing to a district court and its decisions can be appealed before a Specialised Penal Court of Appeal.

[¶BUL-2175] Court of Appeal

The Court of Appeal acts and issues court decisions in the second instance on the grounds of appeals filed against the decisions issued by the district court in the first instance.

The regional court acts as a first instance court, the decision of the regional court will be subject to appeal before the district court, but not before the Court of Appeal.

[¶BUL-2200] Supreme Cassation Court

The Supreme Cassation Court is the upper court instance in the court system for criminal and civil trials (cases). The territorial competence of this court is comprised of the whole territory of the country. The Supreme Cassation Court's headquarters are in Sofia. The Supreme Cassation Court is competent to resolve claims filed against court decisions issued by the district courts or the courts of appeal in their capacity as second instance courts, where the material interest is at least 5,000 BGN in civil cases and at least 10,000 BGN in commercial cases. Besides, the decision has to be pronounced on a material issue of law or procedural law which:

- is addressed in conflict with the case law of the Supreme Court of Cassation;
- has been addressed by the courts in a conflicting manner;
- is relevant to the accurate application of the law, as well as to the progress of law.

	Paragraph
Violation of laws regulating market activities	¶GER-10025
Misleading commercial practices	
General.....	¶GER-10050
Examples.....	¶GER-10075
Comparative advertising	
General.....	¶GER-10100
Examples for unfair comparative advertising	¶GER-10125
Unreasonable harassment	
Telephone, fax, email and letterbox marketing (unsolicited communications)	¶GER-10150
Unknown identity of sender	¶GER-10175
Legal consequences of infringement	
General.....	¶GER-10200
Claims to remove and to cease and desist	¶GER-10225
Special claim for disclosure.....	¶GER-10250
Claim for damages	¶GER-10275
General claim for disclosure	¶GER-10300
Skimming off profits	¶GER-10325
Limitation period	¶GER-10350
Enforcement of claims	
Formal warning.....	¶GER-10375
Interim injunction	¶GER-10425
Legal action.....	¶GER-10435
Penalties	
General.....	¶GER-10450
Criminal advertising practices.....	¶GER-10475
Protection of business/trade secrets, know-how ...	¶GER-10500
 SALES CONDITIONS AND CONSUMER PROTECTION	
General	¶GER-10550
Principles of Contract Formation	
General	¶GER-10575
Offer and acceptance	¶GER-10600
Formal requirements	¶GER-10625
Freedom of contract.....	¶GER-10650

continued over

Consumer Protection Provisions

General ¶GER-10675

Standard terms and conditions

General ¶GER-10700

Inclusion of standard terms and conditions

in contracts with consumers ¶GER-10725

Language ¶GER-10750

Surprising clauses ¶GER-10775

Invalidity of standard terms and conditions ¶GER-10800

Scope of application ¶GER-10825

EEC Directive on unfair contract terms ¶GER-10850

Injunctions ¶GER-10875

Provisions on consumer rights

General principles ¶GER-10900

Right of withdrawal ¶GER-10925

Electronic commerce agreements ¶GER-10950

Scope of Application; burden of proof ¶GER-10975

Provisions on consumer credit

General ¶GER-11000

Written form requirement, duty to inform ¶GER-11025

Legal consequences of failure to comply

with formal requirements ¶GER-11050

Right of withdrawal ¶GER-11075

Connected transactions ¶GER-11100

Credit broker contract ¶GER-11125

Protection from contracts contrary to public policy

General ¶GER-11150

Usury ¶GER-11175

International Contracts for the Sale of Goods

General ¶GER-11200

Basic principles ¶GER-11225

Warranty

General ¶GER-11250

Warranty claims ¶GER-11275

Defects as to quality ¶GER-11300

Sale of consumer goods ¶GER-11325

continued over

	Paragraph
Inspection and requirement to notify defects	¶GER-11350
Limitation period	¶GER-11375
Product Liability	
General	¶GER-11400
Liability under the Product Liability Act	
General.....	¶GER-11425
Product defect.....	¶GER-11450
Manufacturer	¶GER-11475
Exclusion of liability.....	¶GER-11500
Scope of liability	¶GER-11525
Product liability under tort	
General.....	¶GER-11550
Negligent act of infringement.....	¶GER-11575
Relaxation of burden of proof.....	¶GER-11600
Identification and Information Provisions	
General	¶GER-11625
General labelling and information provisions	¶GER-11650
Special Labelling and Information Provisions	
General.....	¶GER-11675
Technical appliances	¶GER-11700
Hazardous substances.....	¶GER-11725
Pharmaceutical products.....	¶GER-11750
Textiles	¶GER-11775
Foodstuffs.....	¶GER-11800

ENVIRONMENTAL RULES

Principles of German Environmental Law	
Legal sources.....	¶GER-11825
Basic principles.....	¶GER-11850
Development of environmental law	¶GER-11875
Types of administrative act (Verwaltungsakt)	¶GER-11900
Choice of Site	
Planning Law	
General.....	¶GER-11925
Urban Planning	
General.....	¶GER-11950

continued over

	Paragraph
Agreement to a development plan	¶GER-11975
Unplanned internal area.....	¶GER-12000
External area	¶GER-12025
Miscellaneous.....	¶GER-12050
Consultant planning.....	¶GER-12075
Nature conservation	¶GER-12100
Underground Pollution	
General.....	¶GER-12125
Demands made by authorities	¶GER-12150
Claims of Third Parties	
General.....	¶GER-12175
Strict liability	¶GER-12200
Fault-based liability	¶GER-12225
Agreement on purchase of property.....	¶GER-12250
Agreement on lease of property	¶GER-12275
Permit Requirements	
Planning Permission	
General.....	¶GER-12300
Rights of neighbours	¶GER-12325
Procedure on building intention	¶GER-12350
Permit under Federal Emissions Protection Act	
Purpose of the Federal Emissions Protection Act	¶GER-12375
Plants and factories requiring permission	¶GER-12400
Permission requirements and basic duties	¶GER-12425
Changes to an existing plant.....	¶GER-12450
Premature commencement.....	¶GER-12475
Supplementary directions.....	¶GER-12500
Plants and factories not requiring permission	¶GER-12525
Demands Made on Business Operations	
Basic duties.....	¶GER-12550
Plant pollution control officer	¶GER-12575

continued over

¶[GER-10500] Protection of business/trade secrets, know-how

Business and trade secrets and know-how are protected under German law by the criminal provisions of ss.17 and 18 of the Unfair Competition Act. Business or trade secrets usually are an important asset of the company. They are defined as business-related facts which are only available to a limited circle of people and in which the proprietor of the business has an economic interest. Business secrets enjoy unlimited protection. But this protection is immediately lost if the business and trade secrets become generally known. Business and trade secrets may be sold along with the company and can be licensed.

Criminal acts which are sanctioned under unfair competition legislation include: betrayal of secrets, industrial espionage, unauthorised use of secrets and piracy committed by members of staff who pass on secrets to third parties or by third parties who obtain and realise business secrets. To initiate criminal proceedings the proprietor of the company must file a complaint with the prosecuting authorities.

SALES CONDITIONS AND CONSUMER PROTECTION**¶[GER-10550] General**

German consumer protection provisions used to be contained in numerous different laws and regulations. However, as of January 1, 2002, most of these laws and regulations were integrated into the German Civil Code (BGB) for a more convenient overview and more practical handling. The provisions themselves had remained largely unchanged. However, these provisions are subject to constant change mainly as a result of harmonisation efforts on a European level and new precedents of German courts. Most of consumer protection law is based on EU directives and therefore needs to be amended whenever there is a change to the respective directive. This chapter is not intended to cover all aspects of consumer protection or simply all those concerned with the sale of goods as this would go beyond the coverage of this overview. Instead this chapter concentrates on two main areas: the general legal principles involved in entering into contractual relations with consumers in Germany and the provisions of particular importance in the area of the distribution of goods. This section exclusively addresses consumer protection issues arising under the law of contract and tort. Consumer protection from unfair competition is covered at GER-9750.

It is worth noting that on October 11, 2011 the European Commission made a proposal for a Common European Sales Law (CESL) in the form of an EU Regulation providing for an optional set of rules applicable to cross-border sales contracts, mainly between businesses and consumers. The parties will be able to choose the CESL if the consumer contract is subject to the laws of a Member State. The CESL will provide rules on the formation of contract, pre-contractual information duties, the right of the consumer to withdraw from the contract and the rights and remedies in case of defects. It will also provide for rules regarding standard terms and conditions. The aim is to have the same standard of consumer protection under the CESL as is already offered in the Member States due to harmonisation on a European level by way of directives. Currently the CESL is still subject to negotiations on the EU level and it is unclear when the CESL will come into force.

There are various mandatory consumer protection provisions with regard to consumer contracts, most of them in the German Civil Code. However, consumer protection law also includes the law of torts and the Product Liability Act (*Produkthaftungsgesetz* (ProdHG)) in particular with regard to protection of rights of individuals, such as the rights of property, life, health and limb. Apart from the Product Safety Act (*Produktsicherheitsgesetz* (ProdsG)), there are also various other laws providing for labelling and information requirements and intended to protect these personal legal rights.

PRINCIPLES OF CONTRACT FORMATION

[¶GER-10575] General

A contract is formed by offer and acceptance and there are normally no requirements as to form.

[¶GER-10600] Offer and acceptance

Under German law, a contract is formed by the parties' mutual declaration of intent to conclude a contract, i.e. by an offer by one party and acceptance of this offer by the other party. An acceptance which aims at widening, limiting or else modifying the original offer is deemed to be a rejection of the original offer. At the same time, it is a counter-offer which has to be accepted by the other party having made the original offer. Therefore, a contract is generally only formed when the acceptance is made unconditionally, i.e. it does not contain any modification of the proposed contract. An exception, however, is made if it is to be assumed that the contract would have been entered into even without a provision concerning the modified point.

As a general rule, silence is not a declaration of intent to accept an offer. A declaration of acceptance is usually required for the formation of a contract. However, actual receipt of the acceptance may not be necessary if customary practice does not require this, as it is for example in mail-order trade.

[¶GER-10625] Formal requirements

In general, contracts can be concluded without observing any particular formal requirements, although important contracts are typically in writing for reason of evidence. If the parties specifically agree to enter into a written contract, the contract is void if it is not in writing unless the written form was agreed upon only for preservation of evidence. If the parties agreed on a written form requirement, fax or email is sufficient, unless a different intention is to be assumed. However, fax or email is not sufficient if written form is required by statutory law. The most important type of consumer contract requiring written form is the consumer credit contract since these provisions apply to all types of non-gratuitous credits.

The German Civil Code includes a requirement that contracts for the transfer of real property must be notarised (notarisation as according to German law). There are other formal requirements for the formation of contracts of incorporation, as well as those under family and succession law.

¶¶GER-10650] Freedom of contract

Freedom of contract (*Privatautonomie*) is a fundamental principle of German law. However, this principle is subject to certain constitutional limitations that attempt to compensate for social and economic imbalances. This protective function of the German Civil Code is apparent in the provisions applicable to contracts with consumers (see ¶¶GER-10675).

CONSUMER PROTECTION PROVISIONS**¶¶GER-10675] General**

There are a number of important provisions on consumer protection to be complied with when entering into contracts with consumers. Most of these provisions were integrated into the German Civil Code as of January 1, 2002. However, some important provisions have been amended with effect from June 13, 2014 due to the new EU Directive 2011/83 on consumer rights of October 25, 2011 ([1993] OJ L95/29).

Standard terms and conditions**¶¶GER-10700] General**

Particularly important provisions to be complied with when entering into contracts with consumers are ss.305–310 BGB regarding standard terms and conditions as they apply to all types of consumer contracts. Provisions qualify as standard terms and conditions within the meaning of ss.305–310 BGB when they are used by one of the parties for several contracts and they are not negotiated individually. Provisions used by a party entering into a contract with a consumer in exercise of its trade, business, craft or profession (trader) also qualify as standard terms and conditions, even if they are only used and intended for use in this particular case, unless the consumer could influence their content. This is the case, regardless of their scope, their form, or the type of contract, as well as whether the provisions are contained in a separate document or within the contract. For the purposes of this chapter, the party seeking to apply its standard terms and conditions is referred to as the seller, the other party as the buyer.

¶¶GER-10725] Inclusion of standard terms and conditions in contracts with consumers

Standard terms and conditions become part of a contract with consumers only if at the time of entry into the contract:

- (1) the seller makes clear reference to the standard terms and conditions;
- (2) the seller gives the buyer, in a reasonable manner, the opportunity to take notice of the contents of the standard terms and conditions; and
- (3) the buyer agrees to the applicability of the standard terms and conditions.

Contracts entered into on the telephone present a problem as to whether the buyer had the possibility to inform itself reasonably on the contents of the standard terms and conditions prior to conclusion of the contract. The seller's offer to send a copy of the standard terms and conditions is insufficient, as the possibility to review the content of

these terms then only takes place after the contract has already been entered into. Even if the standard terms and conditions are included, as a general rule, any agreements which are individually negotiated by the parties prevail over provisions of the standard terms and conditions they contradict.

¶[GER-10750] Language

A seller entering into a contract governed by German law which is, on the basis of contractual negotiations, carried out in German is not required to provide foreigners with a translation of the standard terms and conditions. However, in contracts which have substantial economic implications and which are concluded with foreigners, a duty may exist to explain and instruct. If a bilingual version of the standard terms and conditions includes clear discrepancies between the two versions, the standard terms and conditions written in the language of negotiation will most likely prevail.

¶[GER-10775] Surprising clauses

Provisions in standard terms and conditions which are so unusual that the other party need not expect to encounter them do not form a part of the contract. Here, particularly the appearance of the contract to third parties has to be taken into account. Whether a clause is unusual in the aforementioned sense is determined by inquiring whether a typical average customer would have expected such clause. An additional factor is whether the clause varies substantially from the statutory provision which would be applied in the absence of such a clause. For example, this would be the case if a sales contract for a technical device includes a clause under which by signing the sales contract the customer enters into a two-year maintenance contract for the device.

¶[GER-10800] Invalidity of standard terms and conditions

Whether standard terms and conditions, effectively included into the contract, are valid, is determined by ss.307–309 BGB. According to these provisions of the BGB, standard terms and conditions that are unreasonably disadvantageous to the buyer and in violation of the principle of good faith are invalid. There is an unreasonable disadvantage, if a provision cannot be reconciled with essential principles of the statutory provision from which it deviates, or if it limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised. This general principle is not only applicable to transactions with consumers but also to transactions between traders.

Standard terms and conditions which are generally invalid in consumer contracts are specifically determined in ss.308 and 309 BGB. The provisions differentiate between clauses that are prohibited per se and those that are prohibited if they are determined to be unreasonable. Inter alia, the following clauses are invalid per se:

- a provision whereby the seller is entitled to payment of a contractual penalty if the buyer fails to accept the goods or services, fails to accept on time, defaults on payment or rescinds the contract;
- provisions in contracts for the supply of newly manufactured items and services that fundamentally limit the warranty obligations of the seller;

- provisions in contracts for the supply of newly manufactured items and services that reduce the limitation period to less than one year. However, in purchase contracts with consumers regarding new movable goods, a mandatory period of limitation of two years does apply (s.475(2) BGB). For used movable goods there is a mandatory minimum limitation period of one year for contracts with consumers.

Inter alia, the following clauses are invalid if they are found to be unreasonable:

- an agreement that the seller has the right to be relieved of its performance obligations without any objectively justified reason indicated in the contract;
- an agreement that the seller has a right to modify or deviate from the agreed performance, unless the buyer can reasonably be expected to agree to such a modification or deviation that benefits the seller;
- a provision whereby the seller can demand an unreasonable compensation or an unreasonable reimbursement for expenses.

All standard terms and conditions inconsistent with ss.305–310 BGB are invalid and do not form a part of the contract. It should be noted that an invalid clause cannot be reinterpreted and thereby reduced in a way to satisfy the requirements of ss.305–310 BGB. Instead the invalid provision is replaced with the relevant statutory provision. It should also be noted that the statutory terms are generally much more advantageous to the buyer.

In the event of doubt regarding the interpretation of standard terms and conditions the seller bears the risk that the clause will be interpreted in the way most favourable to the customer. This can also mean that the clause is interpreted in a way most detrimental for the customer thereby leading to the invalidity of the clause if the statutory law then applicable is more favourable to the customer than any other interpretation of the clause.

[¶GER-10825] Scope of application

Sections 305–310 BGB apply to transactions governed by German law and also to transactions governed by foreign law if the consumer has its habitual residence in Germany and the seller:

- (1) pursues its commercial or professional activities in Germany; or
- (2) by any means, directs such activities towards Germany or several countries including Germany

and the contract falls within the scope of such activities.

Sections 305–310 BGB apply to all areas of law except succession, family and company law. If these provisions are applied to employment contracts, the special circumstances of employment law shall be reasonably taken into account. Sections 305–310 BGB are only applicable to a limited extent to standard business terms used in contracts with traders, public law entities, or special funds under public law.

[¶GER-10850] EEC Directive on unfair contract terms

Sections 305–310 BGB transpose EEC Directive 93/13 of April 5, 1993, regarding unfair terms in consumer contracts ([1993] OJ L95/29). Accordingly, ss.305–310 BGB

need to be interpreted in the light of this Directive. The German courts, in applying ss.305–310 BGB, also need to take into account the decisions of the Court of Justice of the EU (CJEU) and need to submit questions relating to the interpretation of the Directive to the CJEU. As the Directive only sets a minimum standard, the Member States can implement additional restrictions into their national law which Germany did with regard to some provisions in ss.305–310 BGB.

¶GER-10875] Injunctions

Applications may be filed for an injunction on the use or recommended practice in legal transactions of those standard terms and conditions that are invalid under ss.307–309 BGB. These applications can only be made by competitors or certain associations and organisations, in particular by those listed by the EU Commission in accordance with Directive 2009/22 ([2009] OJ L110/30).

Provisions on consumer rights

¶GER-10900] General principles

The German Consumer Rights Regulation has been subject to numerous amendments due to EU Directive 2011/83 on consumer rights of October 25, 2011 ([1993] OJ L95/29). These amendments have been transposed into German law with effect from June 13, 2014. The EU Directive brought, in the scope of its application, to a substantial extent a full harmonisation of the national law of the EU Member States.

The amended German Regulation concerns consumer contracts (ss.312–312k, 355–361 BGB). A consumer contract is a contract between a trader and a consumer. A trader is any natural or legal person acting for purposes relating to that person's trade, business, craft, or profession. A consumer is every natural person concluding a legal transaction predominantly for a purpose which cannot be attributed to its trade, business or profession.

Primarily, information duties vis-à-vis consumers as well as the right of withdrawal for distance and off-premises contracts are subject to the new regulation. Moreover, it stipulates duties for electronic commerce agreements and general principles and duties for all non-gratuitous consumer contracts which are not subject to an express statutory exception. Due to the regulatory density in this area of consumer contracts, the following paragraph will only summarise the most substantial points, but cannot mention all details.

General principles and duties for non-gratuitous consumer contracts

The following mandatory provisions basically apply to all non-gratuitous consumer contracts. Sections 312, 312a BGB provide some special rules for certain types of contracts:

- (1) If the trader makes a telephone call to the consumer with a view to concluding a distance contract, it has to disclose its identity or the identity of the person on whose behalf it makes the call and the commercial purpose of the call, at the beginning of the conversation (s.312a(1) BGB).
- (2) Before the contract is concluded the trader must inform the consumer in a clear and comprehensible manner about the main characteristics of the goods and

services, the identity and address of the trader, etc. if that information is not already apparent from the context (see art.246 of the Introductory Act of the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch* (EGBGB)). However, this duty, inter alia, does not apply to contracts involving day-to-day transactions and which are performed immediately. The consequences of a violation of the information duty depend on the respective information and the circumstances of the individual case (e.g. the trader has to bear the transport costs if it omits to inform correctly about these costs (s.312a(2)1 BGB).

- (3) Furthermore, the consumer's express consent is needed for an agreement of extra payments for ancillary goods or services in addition to the remuneration for the trader's main contractual obligation. In the case of electronic commerce, such an agreement can only be concluded by opt-in procedure (s.312a(3) BGB).
- (4) Moreover, the trader has to provide at least one conventional and reasonable gratuitous means of payment to the consumer. Additionally, fees shall not exceed the costs borne by the trader for the use of such means (s.312(4) BGB).
- (5) Where the trader operates a telephone line which is to be contacted in relation to questions of the consumer about the contract concluded (e.g. hotline for warranty cases), the consumer, when contacting the trader, is not bound to pay more than the basic rate (s.312a(5) BGB).

Information duties for distance and off-premises consumer contracts

The new regulation standardises the applicable law for distance and off-premises contracts with regard to information duties (s.312d BGB) and the consumer's right of withdrawal (s.312g BGB).

- (1) A distance contract is any contract concluded between the trader or a person acting on its behalf and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of means of distance communication (e.g. letters, catalogues, telephone, email, tele-medias, etc.—s.312c BGB).
- (2) An off-premises contract means particularly any contract between the trader and the consumer concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader. Moreover, there is an off-premises contract if only the consumer's offer is made in such circumstances and the trader later accepts this offer (s.312b BGB).

Concerning such contracts the trader is obliged to provide the consumer prior to conclusion with the information stipulated in art.246a s.1 EGBGB which differs partially from the general information required for consumer contracts. Additionally the trader has to provide the information on paper (off-premises contracts) or in an appropriate manner, e.g. durable medium (distance contracts) after the contract is concluded (s.312d(1) BGB). Durable medium means any instrument enabling the consumer (or the trader) to store

information addressed personally to it in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored (e.g. email).

If the contract is concluded through the means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract. The further information shall be provided by the trader to the consumer in an appropriate way, e.g. on a durable medium like email (art.246a s.3 EGBGB).

In addition, the trader must provide the consumer in cases of distance contracts with a confirmation of the contract concluded, on a durable medium, within a reasonable time after the conclusion of the distance contract. In case of off-premises contracts, the trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium.

Possible consequences of an infringement of the information duty can be injunctions filed by competitors or consumer associations. Furthermore, the period of time of the right to withdraw does not begin. In addition, the contract's content could be influenced or the declaration of intention could be avoided in special cases. Moreover, the consumer could claim possible damages caused by the infringement.

[¶GER-10925] Right of withdrawal

The essential subject matter of the consumer protection provisions of the German Civil Code is the right of the consumer to withdraw its declaration of intention to enter into the contract. This right is, inter alia, granted in cases of distance and off-premises contracts (s.312g BGB), unless there is an express exception by statutory law (e.g. supply of goods made on the consumer's specifications). With regard to the right of withdrawal in relation to other types of contracts, the German Civil Code stipulates different conditions from the following (e.g. consumer credits, etc.).

A contract is void if the consumer withdraws his declaration of intention to enter into the contract within two weeks after conclusion of the contract (s.355(1), (2) BGB). This period of time begins to run when the consumer received the goods bought, but not before it was duly informed about its right of withdrawal (ss.355(2), 356(2), (3) BGB, art.246 s.1(2) Nr. 1 EGBGB). Concerning the right of withdrawal, the trader has to inform the consumer about the conditions, the time limits, how to exercise the right of withdrawal and about the legislators model withdrawal form (art.246a s.1(2) 1 Nr. 1 EGBGB). For this purpose, the legislator has drafted a template to provide the consumer with information about the right of withdrawal. The law assumes that the consumer was properly informed by the trader if this form is used.

However, the right of withdrawal expires at latest 12 months and 14 days after the consumer received the goods or the contract was concluded (whichever occurs later). With regard to services, the right of withdrawal expires when the service has been fully performed, if the performance has begun with the consumer's prior express consent, and

with the acknowledgement that it will lose its right of withdrawal once the contract has been fully performed.

Legal consequences of withdrawal

If the consumer withdraws the distance or off-premises contract, the parties' obligations to perform the contract end and each party is required to return anything received in performance of the contract within 14 days (s.357(1) BGB). The trader has also to reimburse the costs of delivery limited to the least expensive standard delivery costs offered by the trader. However, the consumer shall bear the direct cost of returning the goods, unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.

Unless the trader has offered to collect the goods itself, with regard to sales contracts, the trader may withhold the reimbursement until it has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Furthermore, the consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall, in any event, not be liable for diminished value of the goods where the trader has failed to provide correct notice of the right of withdrawal.

¶GER-10950] Electronic commerce agreements

Related to electronic commerce agreements, the German Civil Code includes several provisions concerning, inter alia, the ordering process, information duties and the obligation to provide the customer with the possibility to retrieve and store the contract provisions including general terms and conditions at the time the contract is concluded. Some of these provisions equally apply to business-to-business contracts.

An important provision only applying to consumer contracts is s.312j BGB. According to this provision, the trader shall, inter alia, ensure that the consumer, when placing its order, explicitly acknowledges that the order implies an obligation to pay. If placing an order requires activating a button or a similar function, it shall be labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous wording indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this obligation, the consumer is not bound by the contract or order.

The provisions for electronic commerce agreements apply additionally to the distance contract regulation if the contract is concluded between a trader and a consumer via electronic means.

¶GER-10975] Scope of Application; burden of proof

The German Civil Code includes a prohibition on circumvention (s.312k BGB). Sections 312–312j of the German Civil Code continue to apply even if an attempt is made to circumvent their requirements by entering into other types of arrangements. Any agreement that deviates from these provisions to the disadvantage of the customer is void.

Furthermore, the trader bears the burden of proof in regard of the fulfilment of the information duties.

Provisions on consumer credit

¶[GER-11000] General

The provisions in the German Civil Code regarding consumer credits (ss.355, 356b, 491 to 512, 655a–655e BGB) have their origin in EEC Directive 87/102 on consumer credit of December 22, 1986 ([1986] OJ L42/48), now replaced by Directive 2008/48 ([2008] OJ L166/66). The provisions on consumer credits are of considerable economic importance.

These provisions apply to credit contracts and credit broker contracts between commercial lenders or credit brokers on the one hand and consumers on the other hand. The provisions contained in the German Civil Code apply not only to the purchase and financing of moveable items by loans, but also to all types of non-gratuitous credit. They are only applicable to a limited extent to finance leases and credit contracts secured by real property.

¶[GER-11025] Written form requirement, duty to inform

Under s.492 BGB, credit contracts with consumers must be in writing. If offer and acceptance are contained in separate written documents, this is sufficient. The following information is generally required to be provided to the consumer before the signing of the credit contract:

- (1) the lender's name and address;
- (2) the type of loan;
- (3) the annual percentage rate of charge;
- (4) the net credit;
- (5) the debit interest rate;
- (6) the contractual term;
- (7) the amount, quantity and maturity of instalments;
- (8) the total amount;
- (9) the payment conditions;
- (10) all other costs, including costs for payment or use of a payment authentication instrument, for payment transaction or withdrawal, and regulations on adjustment of costs;
- (11) the default interest rate and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- (12) a warning on the consequences of missing payments;
- (13) the existence or absence of a right of withdrawal;
- (14) the right of the borrower to repay the loan early;
- (15) the rights granted in s.491a(2) BGB;
- (16) the rights granted in s.29(7) Federal Data Protection Act (*Bundesdatenschutzgesetz*).

The legislator has also published a template for providing such information which is used

by the lender. Apart from the aforementioned information, the contract itself has to contain at least additional information about:

- (1) the borrower's name and address;
- (2) the competent regulatory authority to the borrower;
- (3) the consumer's right to demand an amortisation table;
- (4) the procedure to be followed in case of termination of the agreement;
- (5) all the other conditions of the contract;
- (6) and information concerning the right of withdrawal (cf. ¶GER-11075).

If the credit contract is for the delivery of a particular item or the performance of particular services upon making instalment payments, the contract has to contain the following conditions in addition to the information above (art.247 s.12(1) EGBGB):

- (1) a description of the product/service;
- (2) the cash payment price;
- (3) information on the consumer's right to withdraw the credit contract in the event of withdrawal of the sales/service contract (see ¶GER-11000) as well as the right to reject repayment of the credit based on facts that would entitle him to withhold payment of the purchase price/service fee.

A description of the product/service and the cash payment price also have to be part of pre-contractual information given to the consumer.

¶GER-11050] Legal consequences of failure to comply with formal requirements

If the contract is not in writing and/or not all of the information referred to above (see ¶GER-10925) is provided to the borrower, the contract will be void. The credit contract will, however, be effective if the consumer receives the loan or, in the event that the credit contract is for the delivery of a particular item or the performance of particular services, the consumer receives the product/service. In such cases, the interest rate listed in the credit contract is reduced to the statutory rate of interest (which is 4 per cent per year).

¶GER-11075] Right of withdrawal

Sections 495 and 355, 365b BGB provide for a right of the consumer to withdraw the credit contract. The withdrawal can generally be declared within two weeks after the consumer was provided with the original of the credit contract, a copy of it, or its offer in writing. If the consumer was not informed (correctly) of its right to withdraw or has not received the other information required (see above GER-11025) at the time of conclusion of the credit contract, the withdrawal can be declared within one month (s.356b(2) BGB) after the consumer received all information. However, this period does only begin to run as soon as the consumer has been provided with all necessary information on a durable medium (s.492(6) BGB) including a clearly and distinctly drafted instruction of its right of withdrawal. If the consumer has not been properly informed the right of withdrawal does not extinguish (ss.355, 356b BGB).

The document informing the consumer about its right to withdraw must include (art.247 s.6(2) EGBGB):

- (1) a reference to the right of withdrawal;
- (2) a notice that no justification and no form is needed;
- (3) the respective period of time for withdrawal;
- (4) the beginning of the period of time;
- (5) the fact that dispatch of the withdrawal notice in good time is sufficient;
- (6) the name and address of the recipient of the withdrawal (normally the lender);
and
- (7) the duty of the consumer to reimburse an obtained loan with the agreed interests. The payable amount of interest per day has to be mentioned (art.247 s.6(2) EGBGB, s.355 BGB).

The legislator again has published a template to provide the consumer with the information. The law assumes that the consumer was properly informed if the lender uses the template.

¶GER-11100] Connected transactions

Contracts which finance transactions are referred to as connected contracts under the German Civil Code provisions (s.358 BGB). A contract is deemed to be a connected contract if the credit is for the purpose of financing a purchase and the purchase and the credit contract are to be viewed as an economic unit. If the lender makes use of the services of the seller in the preparation or formation of the contract, the purchase and credit contract are deemed to form an economic unit. An economic unit also exists if the seller itself finances the purchase price. If there is a connected contract and the consumer effectively withdraws the purchase contract, the credit contract is also rendered void and vice versa.

If the consumer is entitled to withhold payment of the price, the consumer is entitled to withhold the payment of amounts due to the lender resulting from the credit contract. However, this does not apply if the financed purchase price does not exceed €200 or if the payment is withheld on the basis of a contractual modification agreed upon by the seller and the consumer following the formation of the credit contract. If the consumer withholds payment because delivered items were defective and the consumer requests remedy or replacement on the basis of contractual or legal provisions, the consumer can only refuse to pay if the remedy or replacement has failed.

¶GER-11125] Credit broker contract

In general, credit is more expensive when obtained through a credit broker. In order to protect the consumer, the German Civil Code provisions (s.655(a)–655(e) BGB) require that a credit broker contract must be in writing. The contract must also disclose certain information to the consumer, inter alia whether the broker receives any remuneration from third parties and the fee the credit broker charges to the consumer. The contract is void if it does not comply with these provisions.

Protection from contracts contrary to public policy

¶GER-11150] General

Section 138 BGB contains a general legal principle providing that transactions contrary to public policy are void. This provision is also concerned with consumer

protection. According to legal precedent, a transaction is contrary to public policy when it offends the principles of justice and equity. Thereby s.138 BGB incorporates the system of constitutional values into private law. Contracts which are unusually detrimental to one of the parties and result from unequal bargaining powers are not compatible with s.138 BGB. A legal transaction can be considered in violation with public policy either due to its content, i.e. the obligations created, or due to its entire character, i.e. the motivation for the transaction. In general, in addition to an objective infringement of public policy, there must also be a personal detriment that can be asserted. The unconscionable transaction may be the result of the particular inexperience or the pronounced weakness of one party that gives the other party an economic advantage. An unconscionable transaction normally renders the entire legal transaction void.

[¶GER-11175] Usury

Usury is a special instance of the applicability of s.138 BGB (see also ¶GER-11150). Usurious contracts require an evident disproportion between the contractual performances and additionally a subjective component, such as exploiting the predicament, inexperience, lack of sound judgement or a considerable weakness of will of the other party. Usurious contracts could be e.g. those which contain extraordinarily high interest rates in comparison to the market interest rate. They are therefore unconscionable and void. If the credit contract is void, the borrower must repay the net credit amount without interest. Whether the interest rate is unconscionable is determined by a comparison between the contract and the market interest rate. In calculation of the contract interest rate all other fees to be paid to the lender are to be included (for example a broker fee). Normally, there is a noticeable inequality between the market interest rate and the contractual interest rate if the contractual interest rate exceeds the normal market interest rate by 100 per cent.

INTERNATIONAL CONTRACTS FOR THE SALE OF GOODS

[¶GER-11200] General

Germany is a Contracting State to the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG), applying to contracts for the sale of goods involving one party with its principal place of business in another state, which is either also a contracting state to the CISG, or when the rules of private international law lead to the application of the law of a contracting state. The CISG does not apply if the parties have validly excluded the application of CISG. The CISG does also not apply if the buyer is a consumer. The discussion in the following paragraphs (see ¶GER-11225 et seq.) is limited to non-uniform German sales law.

[¶GER-11225] Basic principles

A sales contract obliges the seller to transfer possession and ownership of goods to the buyer. The buyer is obliged to pay the agreed price and to accept delivery of the goods. If the parties have not agreed on any other terms, the goods are to be transferred at the seller's business premises. The buyer has to transfer the purchase price at its own risk and cost to the seller.

In order to effect the transfer of the ownership of the goods, the seller must generally hand over the items to the buyer and both must agree that the ownership should transfer. If, however, the buyer is already in possession of the items, an agreement regarding the transfer of ownership is sufficient. If the seller wishes to remain in possession of the goods, the transfer of the ownership can still be effected if the parties agree that the seller will hold the goods on behalf of the buyer. If a third party is in possession of the goods, the seller can transfer ownership to the buyer by assigning its claim of return to the buyer. If the seller is neither the owner of the goods nor acting with disposal authorisation, the buyer can only acquire ownership of the goods if it comes into possession of the sold good and, at the time of the purported transfer, it is not aware that the seller is not the owner of the goods and the lack of knowledge is not due to gross negligence (*bona fide purchaser*). However, this does not apply if the goods were stolen from the actual owner—in such a case a *bona fide* purchase is not possible.

In Germany, it is common to agree on retention of title in sales contracts between traders as well as in consumer contracts. This means that the seller remains the owner of the goods, even after they have been transferred into the buyer's possession, until the purchase price is fully paid. Where such retention of title has been agreed upon, the purchaser can rescind the sales contract and request the return of the goods if the buyer defaults on the payment of the purchase price, even after the seller has set a deadline for payment of the purchase price. In the event of a so-called extended retention of title, which is very common in business transactions, the buyer can sell or process the acquired goods that are subject to retention of title. As security for the seller, the buyer transfers the ownership of the processed goods to the seller or assigns the future claim for payment of the sales price resulting from the sale of the goods to the seller.

Warranty

¶[GER-11250] General

The German law on warranty, as set out in the German Civil Code, is based on the principles of Roman law. As a result of the 2002 revision transposing an EC Directive into German law it was in part adapted to the CISG.

¶[GER-11275] Warranty claims

If the goods purchased are defective (see below ¶[GER-11300]), the buyer is entitled to subsequent fulfilment (*Nacherfüllungsanspruch*). This claim, which takes precedence over other rights and remedies, may take the form of remedying the defect, e.g. by repair, or supply of goods which are free from defect. The buyer can choose between these two options of subsequent fulfilment. The seller can only reject the subsequent fulfilment option selected by the buyer if the chosen type is unreasonable under the circumstances given. The law only provides for the buyer to rescind from the contract or for the purchase price to be reduced if the seller has been set a deadline for subsequent fulfilment and if this deadline has expired without subsequent fulfilment by the seller. The buyer does not need to set a deadline if the seller has refused both to remedy the defect and to deliver goods which are free from defect, or if subsequent fulfilment has not been successful or if it is unreasonable to expect the buyer to accept subsequent fulfilment. The buyer is only

entitled to rescind from the contract if the defect is substantial, otherwise its only claim is for a reduction of the purchase price.

The buyer only has a claim for damages if, in addition to the failure to provide subsequent performance, the seller has acted negligently or intentionally with regard to the failure of subsequent performance or the defect. This is, *inter alia*, the case if the seller ought to have known the defect. However, negligence on the part of the seller is assumed by law unless the seller can prove otherwise. In this respect there are, in principle, two types of claims. First, the buyer can keep the defective product and demand compensation from the seller for the loss it has sustained as a consequence of the product's defect, e.g. when the product could only be sold at a reduced price. Alternatively, the buyer can decide to return the defective product and demand compensation for the entire loss. However, the latter option is only available if the defect is substantial. The compensation due to the buyer also comprises consequential damages, in particular lost profit, e.g. owing to interruption of production, failure of a subsequent transaction, reimbursement of a contractual penalty imposed on the buyer as a result of the failure of a subsequent transaction, etc.

Damage to other objects caused by the defect must also be reimbursed if the seller acted intentionally or negligently. Any such damage which could not be remedied by the subsequent performance of the seller does not require the prior setting of a deadline for subsequent performance.

¶[GER-11300] Defects as to quality

The law provides for a definition of the term “defect”. The goods purchased are deemed to be defective if, at the time of handover, they are not in accordance with what was agreed or, lacking agreement, not suitable for the use intended under the contract. If the contract does not specify the use of the goods purchased, the criterion for defectiveness is whether they can be used for their customary purpose and its quality standard is measured against goods of the same kind and if they have a quality which the buyer may expect from this type of good. The buyer's expectation can be influenced by public statements made by the seller or manufacturer, in particular in advertisements. Thus, if the advertising suggests that the buyer can expect the goods purchased to have certain qualities which they then turn out not to have, the goods are deemed to be defective even though they comply with the product description.

¶[GER-11325] Sale of consumer goods

On the basis of EC Directive 1999/44 on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees ([1999] OJ L171/12) the German legislator has created special provisions for purchases made by consumers from traders.

The most important feature of the sale of consumer goods is that it is governed by mandatory standards and that the principle of contractual freedom is in many ways restricted. This means that in a contract between a trader and a consumer, mandatory requirements cannot be waived to the detriment of the consumer. Moreover, if the buyer claims a consumer good to be defective, statutory law stipulates a reversal of the burden of proof for the first six months following handover. In addition, special provisions apply

if the consumer is granted a guarantee in addition to the statutory warranty. Finally, the legislator has established regulations designed to enable a seller selling a product to a consumer as a reseller to seek recourse from its own suppliers from whom the seller bought the product. This is referred to as redress in the supplier chain and is also mandatory law, i.e. the supplier cannot exclude the rights of the reseller to whom it sells the consumer product.

¶[GER-11350] Inspection and requirement to notify defects

If the buyer and seller are traders, the buyer is obliged to inspect the goods upon delivery. The period of time in which such inspection must be effected depends upon the individual circumstances, but can on average be considered to be a period of one week from delivery. The required manner and scope of the inspection depend on the relevant customary business practice and the objective standard of care of an ordinary prudent business person. In a commercial transaction, the buyer is further required to notify the seller of quality defects detected or still to be detected in the course of the inspection without undue delay. Furthermore, the seller must be notified upon discovery of any hidden defects that were not discoverable in the scope of the inspection without undue delay as soon as they appear. An objective standard is applicable, in that the personal circumstances of the buyer are usually not taken into account. The type of defect as well as its scope must be described in the notification of the defect as precisely as possible. The cause of defect is not to be included, hence a late notification will not be excused on the ground that the cause of the defect needed to be clarified. The failure to follow the prescribed investigation and notification obligations results in the buyer forfeiting all claims regarding defective delivery except for claims for fraudulent concealment. This includes not only warranty claims but also any damage claims based on positive contractual infringement (*positive Vertragsverletzung*) in as far as the claim is an attempt to seek compensation for consequential damages.

¶[GER-11375] Limitation period

Any claims of the buyer on the grounds of defects in products purchased become statute-barred after a period of two years from handover of such a product. Whether the buyer was or was not aware of its claim is in principle of no relevance. If hidden defects appear after the limitation period has expired, the buyer's claims become statute-barred before it has been able to assert its rights. This does not apply if the seller has concealed the defects with malicious intent in which case the limitation period is three years and commences at the time the buyer becomes aware of its claim or would have obtained such knowledge if he had not shown gross negligence. In contracts between traders and consumers for newly built products the two-year period cannot be reduced.

In contracts between traders, where the terms have been negotiated individually between the parties, it is possible to reduce the two-year period; as far as general terms and conditions are concerned the prevailing view is that it should be possible to reduce the limitation period to one year between companies. A special feature of this is redress in the supply chain (see above GER-11325). If the product is finally sold to a consumer, the reseller, being a trader, is entitled to assert claims for defects against the supplier of the

product for up to five years after the product purchased has been handed over under certain circumstances.

PRODUCT LIABILITY

[¶GER-11400] General

If an injury is suffered as a result of a product defect, the buyer can pursue claims for damages against the seller under the sales contract (see above GER-11275). Furthermore, the buyer and any other injured third party may also make a claim for damages based on the Product Liability Act (*Produkthaftungsgesetz* (ProdHG)) or tort under s.823 BGB.

Liability under the Product Liability Act

[¶GER-11425] General

The Product Liability Act, which is based on EEC Directive 85/374 ([1985] OJ L210/29), has been in force in Germany since January 1, 1990. Under this statute the manufacturer is liable for damages resulting from any product defect (see below GER-11450) irrespective of whether the manufacturer acted negligently. This was rather new for German law as, in general, a claim for damages usually requires at least a negligent act or omission.

[¶GER-11450] Product defect

A product is defined as any moveable item, no matter whether it forms an integral part of another moveable item and independently of whether it carries a specific danger or has a particular use. Products include, for example, consumer goods, machines and appliances, cars, chemicals, food products and packaging materials. Such products are defective if they are not as safe as would be expected considering the circumstances and their reasonably expected use. This is evaluated at the time the product enters the market, i.e. a product that meets the safety requirement at a particular time is not defective later if the safety expectations have been increased. However, the manufacturer must take account of the most recent technology.

[¶GER-11475] Manufacturer

A manufacturer within the meaning of the ProdHaftG is the producer of a final product, raw material or a part of a product. A manufacturer is also any party that acts as manufacturer by use of its name, its trade mark or any other identifying mark. Importers of products from a third country into the European Union are liable along with the manufacturer. An importer importing products from one EU Member State into another does not come under the scope of these provisions. Under the Product Liability Act a supplier is only liable in exceptional cases. If the manufacturer of the product cannot be determined, the supplier will be liable in lieu of the manufacturer, unless the supplier reveals the identity of the manufacturer or the person who supplied the supplier with the product to the injured party within one month following request for such information.

[¶GER-11500] Exclusion of liability

Any liability for damages on the part of the manufacturer is excluded if it can be assumed from the circumstances that the product did not have the defect that caused the damage at the time the product was put into circulation by the manufacturer. This means that the manufacturer is not responsible for the defects that occur following the sale of the product, for example by improper handling within the distribution channel or by the injured party itself. Compensation is also not available if the product complied with obligatory statutory provisions at the time the manufacturer put the product on the market and the defect is due to the compliance with these provisions. The manufacturer is not liable if the defect could not have been known under the available technology at the time the manufacturer put the product on the market.

[¶GER-11525] Scope of liability

When more than one manufacturer or party is liable for the same damage, they are jointly and severally liable. The amount of damages is to be reduced accordingly for any contributory liability on the part of the injured party. The Product Liability Act limits compensation for personal injuries to a maximum of €85 million per case. Compensation for damage to property has no limit, however, the injured party has to bear the first €500 of the damages. In addition, the manufacturer is only liable for destruction or damage to other items as a result of the defective product if the other item is normally designated for private use and was mainly used in this manner by the injured party. Compensation for the damage and destruction of the defective product itself does not fall under the scope of the Product Liability Act. The Product Liability Act also provides for compensation for immaterial damages.

Product liability under tort**[¶GER-11550] General**

Under s.823(1) BGB, a person who wrongfully, whether intentionally or negligently, injures the life, limb, health, freedom, property or other absolute right of another is required to compensate the other for the resulting damages. This obligation is one of statutory law which ignores whether a contractual relationship existed between the parties.

[¶GER-11575] Negligent act of infringement

The manufacturer is liable to persons suffering injury from its product under s.823(1) BGB. This applies irrespective of whether the injured person acquired the product from the manufacturer or from a dealer, or if it was injured by the product acquired by a third party. However, the manufacturer is only liable if it acted unlawfully and with fault (intentional or negligent). The manufacturer is deemed to have acted unlawfully if it did not follow all precautions that were technically and objectively possible and economically feasible. Even when a manufacturer has acted unlawfully it is only liable if it also acted intentionally or negligently. A manufacturer acts intentionally when it knows that certain damage is likely to result from the product and accepts this. A manufacturer acts negligently if it fails to observe the duty of ordinary care.

If development and design defects of the product are only apparent after the product has been placed on the market, the manufacturer is required to immediately take the necessary steps to prevent damage to third parties. It must either stop production or redesign the product. With regard to products already on the market, the manufacturer has a duty to expressly notify the buyer or, if it does not know the buyer, the general public of the danger or launch a product recall in as far as this is possible. The Federal Court of Justice has ruled that the obligation to recall does not include an obligation to provide exchange or remedy free of charge. If the manufacturer does not fulfil its obligation, it is liable for damages if the buyer can show that a timely notification of the danger or a product recall could have prevented the damage.

The importer and the dealer of the product are generally not subject to liability under s.823 BGB. On this issue, German courts have taken the view that the importer and the dealer cannot have any direct influence on the design of the product. The sole exception to this general rule requires that the dealer has had reason to carry out a special investigation into the goods for particular reasons, e.g. if the dealer knows of existing damage claims resulting from the use of the product.

[¶GER-11600] Relaxation of burden of proof

As a general rule, the party bringing the action bears the burden of proving that the conditions exist for relief to be granted. However, legal precedent provides for a relaxed standard of proof for those bringing product liability claims under s.823 BGB. In such cases the injured party has to show that:

- (1) it suffered damage as a result of the product;
- (2) the damage is based on a defect of the product (see above GER-11450); and
- (3) the defect existed before the product was placed on the market.

Due to the difficulty of proving that a product was defective at the time it was placed on the market, German courts have taken the view that it is sufficient if experience shows that the defects in the product must have occurred during manufacturing. The injured party must also prove that the defect was the fault of the manufacturer. As the injured party is typically not provided with the actual facts regarding the manufacturing, it is often impossible to meet this evidence requirement. As a result German courts reversed the burden of proof to the benefit of the injured party. If the product has a design or manufacturing defect, or if the manufacturer did not warn the consumer of the dangers that could result from use of the product, the burden of proof shifts to the manufacturer, which must prove that it is not at fault.

IDENTIFICATION AND INFORMATION PROVISIONS

[¶GER-11625] General

In Germany, consumers are not primarily protected by the prohibition of certain products and services. Instead the provider of goods is usually required to provide information regarding the products and services, so that the consumer can then make a rational decision about the market. The obligation of the provider to abide by certain labelling and information duties serves to protect the health, security and economic inter-

est of the consumer. Labelling and information provisions can be divided into those that are of general applicability and those that are only applicable to particular products. In view of the numerous provisions, the discussion in the following paragraphs (see ¶GER-11650 et seq.) is not intended to be a comprehensive description of all the provisions.

¶GER-11650] General labelling and information provisions

Under German sales law, the seller is to a certain extent required to inform the buyer about the facts of which the seller is aware that they are important for the buyer in deciding whether to purchase the product in question. Failure of the seller to inform gives rise to a claim for damages on the buyer's part under contract law. However, the buyer needs to prove its actual economic loss.

The Unfair Competition Act (*Gesetz gegen unlauteren Wettbewerb* (UWG)) is also significant with respect to the seller's identification and information obligations. Formerly, there was no requirement to provide information. The information as provided only had to be true. Incomplete statements were only prohibited if they were both misleading and untrue. This changed in late 2008 with the transposition of EC Directive 2005/29 ([2005] OJ L149/22) into German law. According to s.5a of the Unfair Competition Act the concealment of facts can also be considered unfair competition within the meaning of the Act. This is the case when a trader omits material information the average consumer needs to make an informed transactional decision.

The Pricing Regulation (*Preisangabenverordnung* (PAngV)) includes further general information obligations to be observed by the seller. The PAngV provides that, when stating a price, the seller is required to state the actual final price when advertising to consumers in papers, journals, prospectuses, posters, on radio or television, or by other means. Dealers are required to attach a price tag or to mark the displayed goods. Those offering services must place a price list in the place of business. An infringement of the Pricing Regulation can entail a fine as an administrative offence. In addition, competitors can file an application for an injunction based on infringements of the Pricing Regulation.

General identification and information provisions are also contained in the Pre-packaging Regulation (*Fertigpackungsverordnung* (FertigPackV)). These provisions are intended to ensure that the buyer is not misled as to the contents of pre-packaged goods. Therefore, the Pre-packaging Regulation provides that such goods can only be put on the market if the label contains information regarding the weight, volume, or number of items or another measurement. The Pre-packaging Regulation regulates in detail which deviations are allowed according to the various package sizes. Pursuant to the above mentioned Pricing Regulation, inter alia pre-packed goods shall under certain circumstances also indicate the base price of the good in a specific quantity unit as kilogram, litre, etc. (s.2 PAngV). The correct measurement of the packaging size and the amount of content is regulated by the Weights and Measures Act (*Gesetz über das Meß- und Eichwesen* (EichG)). Until the end of 2008, the Pre-packaging Regulation also contained various restrictions limiting the possible quantities/volumes in which packed products could be sold. This was liberalised under the EC Directive 2007/45 ([2007] OJ L247/17). The Pre-packaging Regulation now only contains restrictions for the volume of bottles/containers for wine and spirits.

Special Labelling and Information Provisions

¶¶GER-11675] General

Special provisions regarding labelling and information are located in various laws that are applicable to the launch of certain products on the market.

¶¶GER-11700] Technical appliances

Since December 1, 2011, the Product Safety Act (*Produktsicherheitsgesetz* (ProdSG)) has regulated the labelling of merchandise, materials and preparations created by a manufacturing process and certain information duties regarding it. Since the latest revision of the Product Safety Act suppliers of parts to be used in the manufacturing of a product also fall within the scope of application of the Product Safety Act. The general aim of the Product Safety Act is to guarantee that all products put on the market are safe. This includes their being supplied with the necessary warnings and instructions.

Stricter provisions superseding the general ones apply to consumer products. It has to be noted that not only products designated for use by consumers qualify as consumer products but also products which under reasonable foreseeable circumstances are likely to be used by consumers. The Product Safety Act regulates, inter alia, the obligation to show the name and postal address of the manufacturer to consumer products or the packaging and to label the product in such a way that it can be clearly identified. Manufacturers outside the European Economic Area must affix the name and postal address of their representative or importer. Consumers must additionally receive the information they require for a safe use of the product. Therefore, instructions for use of the product must be included in German. The products put on the market must also undergo random checks, complaints must be investigated and, if appropriate, the distributors must be informed about the product on the market and necessary measures to be taken. If there are any indications that consumer goods on the market represent a risk to the health and safety of people, the authorities must be informed thereof.

Since the Technical Equipment and Product Safety Act, the predecessor of the Product Safety Act, came into effect in 2004 the manufacturers of many products have been permitted to attach a sign known as a “GS” mark (*geprüfte Sicherheit*) to their products in order to document that the products have successfully passed a safety inspection. The possibility of using the GS sign is now limited to fewer products. The validity of the recognition to use the GS sign for certain products by the approved bodies can be extended to no more than five years. A GS sign is only issued after certain tests by approved bodies have been carried out and certain legal provisions have been complied with.

The Product Safety Act and the regulations released thereunder also regulate the use of the CE marking which indicates the conformity of the product with EU harmonisation legislation. The purpose of the CE marking system is to standardise and improve product safety in the European Union. The system of product safety is based on the principle of self-regulation. Under this system the manufacturer in particular must ensure that its products meet basic health and safety requirements and must safeguard this by carrying out sample testing. The manufacturer confirms the safety of its products by affixing the

CE sign. The prerequisites that have to be met before affixing the CE sign vary from product to product. The Product Safety Act stipulates that a product may not be put on the market with a CE mark unless this is specified in some form of legal regulation. Therefore, any other use of the CE mark is unlawful.

¶GER-11725] Hazardous substances

The Chemical Substances Act (*Chemikaliengesetz* (ChemG)) governs the labelling of hazardous substances by classifying substances according to particular levels of danger. The Chemical Substances Act was subject to various amendments in 2008 as a result of the implementation of EC Directive 2006/1907 ([2006] OJ L396/1) widely known as the REACH Directive which requires registration of chemical substances. The manufacturer or the distributor of the substances commercially or in the context of another economic undertaking putting the substance on the market is required to label the substance. According to s.14 of the Chemical Substances Act in connection with the German Regulation on Hazardous Substances (*Gefahrstoffverordnung* (GefStoffV)) and in connection with EC Directive 1999/45, the label must contain the name of the substance and the names of the dangerous substances contained in its preparation. From June 1, 2015, EC Regulation 2008/1272 will apply. However, it might be applied prior to this date regarding packaging and labelling on a voluntary basis. In addition, a danger symbol as well as a description of the danger should be placed on the label. For example, substances that are flammable must have a label with a warning in the form of a pictorial symbol (such as flames) and are to be marked with a written warning (such as “highly flammable”). The labelling requirements include the disclosure of certain risks, the text of which is predetermined by legislation.

¶GER-11750] Pharmaceutical products

The labelling of pharmaceutical products is governed by the Pharmaceuticals Act (*Arzneimittelgesetz* (AMG)). The Pharmaceuticals Act provides that pharmaceuticals may only be placed on the market if certain information is placed on the exterior of the container in legible writing, generally understandable in the German language and indelibly. This includes, for example, the name and address of the pharmaceutical company, the instructions for use and the expiry date. In addition, under s.11 of the Pharmaceuticals Act, certain disclosures are required on the package insert. This includes, for example, the scope of use and potential side effects of the product. In the area of advertising the Health-related Products and Services Advertising Act (*Heilmittelwerbegesetz* (HWG)) regulates the disclosure requirements in advertisements for medicines.

¶GER-11775] Textiles

Particular labelling requirements for textiles are included in the Textiles Labelling Act (*Textilkennzeichnungsgesetz* (TextilKennzG)). Under s.1 of the Textiles Labelling Act textiles may only be placed on the market or imported if all information regarding the type of raw materials and their corresponding percentage in the item are provided. The Textiles Labelling Act regulates the identification of various textile fibres as well as the correct calculation and listing of the percentage contents of jointly processed textiles and raw materials.

[¶GER-11800] Foodstuffs

The Food Labelling Regulation (*Lebensmittelkennzeichnungsverordnung (LMKV)*) governs the labelling and distribution of pre-packaged foods. The Food Labelling Regulation requires that all foodstuffs that are to be handed over to the consumer in packaging are externally labelled. The package is to bear the name of the product, the name or company name and address of the manufacturer, the packager or seller of the finished package, an index of the ingredients, a shelf life date, or if the food spoils easily, the date by which the item should be consumed. Alcohol content is to be listed on drinks containing more than 1.2 per cent alcohol. In addition, under the Weights and Measures Act (*Gesetz über das Mess- und Eichwesen (EichG)*), the amount is to be included on the label.

ENVIRONMENTAL RULES**PRINCIPLES OF GERMAN ENVIRONMENTAL LAW****[¶GER-11825] Legal sources**

Environmental law is a field of law that cuts across many other legal areas. At present it is standardised in many different legal sources (see ¶GER-11875 on the efforts to harmonise environmental law) which can be roughly systematised as outlined below.

Federal, state and EU law

Both the Federal Republic and the individual federal states have the competence to issue environmental standards. The principal environmental decisions, however, are regulated at federal level and therefore apply to all of Germany. In contrast, individual state laws tend to complement federal laws. The following information is therefore limited to federal law.

Many environmental law provisions valid in Germany are based on legal acts of the European Union. Mention should first be made of the Regulations applying directly to all EU Member States, e.g. the Regulation concerning Registration, Evaluation and Authorisation of Chemicals (REACH). In addition there are numerous provisions of German environmental law based wholly or in part on EU law, such as the Environmental Information Act (*Umweltingformationsgesetz*), the Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz*), the Environmental Damage Act (*Umweltschadensgesetz* (USchadG)), and parts of the Product Recycling Act (*Kreislaufwirtschaftsgesetz* (KrWG)). As EU and national law do not co-exist side by side but are linked in many ways (whereby EU law takes precedence over national law) they are described together in the following.

Principal legal sources in federal law

Under the Basic Law (*Grundgesetz* (GG)) the state is obliged to protect the natural basis for life (GG, Art.20a). Article 20a does not grant an enforceable right to the individual but forms the basis for the state's obligation to direct its actions towards the goal of "protection of natural bases for life" (State's Main Aim).

The essential principles of environmental law are contained in formal law, i.e. acts of Parliament. The most important environmental law statutes are the:

- Soil Protection Act (*Bundesbodenschutzgesetz* (BBodSchG));
- Emissions Protection Act (*Bundesimmissionsschutzgesetz* (BImSchG));
- Product Recycling Act (*Kreislaufwirtschaftsgesetz* (KrWG));
- Nature Preservation Act (*Bundesnaturschutzgesetz* (BNatSchG));
- Water Resources Act (*Wasserhaushaltsgesetz* (WHG));
- Genetic Engineering Act (*Gentechnikgesetz* (GenTG));
- Environmental Liability Act (*Umwelthaftungsgesetz* (UmweltHG));
- Environmental Impact Assessments Act (*Gesetz über die Umweltverträglichkeitsprüfung* (UVPG));
- Environmental Information Act (*Umweltinformationsgesetz* (UIG)); and
- Environmental Damage Act (*Umweltschadensgesetz* (USchadG));
- Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz* (UmwRG)).

There are also environmental provisions in numerous other federal acts, such as in the Federal Building Act (*Baugesetzbuch* (BauGB)).

Regulations are substantive law and are passed by the executive and not by the legislature. Many laws take the form of regulations, e.g. the Federal Emissions Protection Act (so far 36 regulations) and the Product Recycling and Waste Disposal Act (numerous regulations, e.g. Packaging Regulation (*Verpackungsverordnung* (VerpackV)).

Administrative provisions (often known as decrees (*Verwaltungsvorschrift*)) are not legal sources in the strictest sense but rather the administration's instructions to its employees regarding the application of laws and ordinances (*Verordnungen*). As these provisions are not law, they only bind the authorities and not the courts. However, in practice many administrative provisions are applied as if they were law. In August 2007, the Federal Administrative Court (*Bundesverwaltungsgericht* (BVerwG)) ruled that administrative provisions which substantiate indefinite law terms should also be binding on the courts. This applies in particular to TA-Luft and TA-Lärm which are important administrative environmental and planning law provisions.

¶GER-11850] Basic principles

Environmental law is influenced by the following three basic principles.

- (1) The precautionary principle provides that risks for the environment or for man should not only be remedied or combated but they should be excluded, if possible, or minimised through forward planning and suitable technical precautions.
- (2) The principle of responsibility provides that the party that has caused the problem is responsible for remedying or controlling considerably disadvantageous effects, dangers or risks for the environment or man (the "polluter pays" principle). Only if the identity of the party that has caused such problems cannot be ascertained is the general public responsible.
- (3) The principle of co-operation requires the parties affected to work together to bring about an improvement in environmentally relevant decisions.

The above principles are not strictly legal principles. However they have influenced many legal decisions. Knowledge of these is therefore necessary understand German environmental law.

[¶GER-11875] Development of environmental law

As a relatively new area of law, environmental law is still at the development stage. There have been a number of large codifications since 1990 alone: the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung* (UVPG)) and the Environmental Liability Act (*Umwelthaftungsgesetz* (UmweltHG)) in 1990; the Genetic Engineering Act (*Gentechnikgesetz* (GenTG)) in 1993; the Product Recycling and Waste Disposal Act (*Kreislaufwirtschafts- und Abfallgesetz* (KrW-/AbfG)) and the Environmental Information Act (*Umweltingformationsgesetz* (UIG)) in 1994; the Soil Protection Act (*Bundesbodenschutzgesetz* (BBodSchG)) in 1998; the Greenhouse Gas Emission Allowance Trading Act (*Treibhausgas-Emissionshandelsgesetz* (TEHG)) in 2004; the Environmental Damage Act (*Umweltschadensgesetz* (USchadG)) in 2008, which has been developed from the European Environmental Liability Directive and the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz* (UmwRG)) in 2009. Most have already undergone several amendments, mainly to bring them into line with EC Directives. There have also been several amendments to procedural law serving to accelerate permit applications and the (alleged) restriction on legal protection of third parties in many potential situations.

The plans to introduce an Environmental Code (*Umweltgesetzbuch* (UGB)) failed once again in February 2009. As a result some important amendments were passed separately through the Omnibus Act, namely the Nature Conservation Act (*Bundesnaturschutzgesetz* (BNatSchG)) and the Water Act (*Wasserhaushaltsgesetz* (WHG)), which both came into force on March 1, 2010.

[¶GER-11900] Types of administrative act (Verwaltungsakt)

The administrative authorities judge each case in environmental law on its individual merits. Issuing permits for building projects, industrial sites, plants, and factories and attaching conditions on how these are to be executed or on special associated measures

INDEX

- Abuse of dominant position/market strength** – see Competition rules
- Accounting**
- . limited liability companies GER-1350
 - . limited partnership limited by shares GER-3075
 - . public limited companies GER-2150
- Advertising**
- . comparative – see Comparative advertising
 - . misleading – see Misleading commercial practices
- Advisory board**
- . limited liability companies GER-1325
- Agriculture**
- . facilitated procedure for imports of agricultural goods GER-675
- AGs** – see Public limited companies
- Arbitration**
- . ad hoc arbitration GER-13125
 - . arbitration agreement
 - . . . form GER-13175
 - . arbitrators' agreement GER-13100
 - . award
 - . . . appeals against GER-13425
 - . . . enforcement GER-13375; GER-13400
 - . . . setting aside GER-13450
 - . courts, action by GER-13300
 - . enforcement of awards
 - . . . abroad GER-13400
 - . . . appeals against GER-13475
 - . . . in Germany GER-13375
 - . institutional arbitration GER-13125
 - . interim protection GER-13325
 - . legislation
 - . . . general characteristics GER-13075
 - . . . generally GER-13050
 - . . . scope GER-13075
 - . multi-party arbitration GER-13350
 - . proceedings
 - . . . arbitrability GER-13150
 - . . . award GER-13275
 - . . . commencement GER-13250
 - . . . conduct GER-13250
 - . . . form of agreement GER-13175
 - . . . non-judicial GER-13975
 - . . . tribunal GER-13200; GER-13225
 - . special situations GER-13300; GER-13325; GER-13350
 - . tribunal
 - . . . appointment GER-13200
 - . . . competence GER-13225
- Articles of association**
- . limited liability companies GER-1075; GER-1150
 - . public limited companies GER-1625
- Asset-backed securitisation** GER-4150
- Bankruptcy**
- . limited liability companies GER-1375
- Banks**
- . credit system – see Finance
 - . development programmes GER-5775
- Basic Law**
- . employment-related provisions GER-5900
 - . generally GER-050; GER-375(1)
- Branch offices** GER-3375
- Building sector**
- . withholding tax GER-5000
- Bundesrat** GER-300
- Bundestag** GER-250
- Business incentives**
- . development programmes GER-5775
 - . generally GER-5450
 - . investment subsidies
 - . . . generally GER-5500; GER-5750
 - . . . level of subsidy GER-5525
 - . . . procedure GER-5550
 - . . . local incentives GER-5800
 - . new federal states and Berlin, promotion
 - . . . generally GER-5475
 - . investment subsidies GER-5475; GER-5500; GER-5525; GER-5550
 - . tax incentives
 - . . . generally GER-5575
 - . . . international commercial shipping GER-5600
 - . . . monuments and buildings of historic interest GER-5725
 - . . . new businesses GER-5675
 - . . . reserves GER-5700
 - . . . savings allowance for SMEs GER-5625
 - . . . urban renewal areas GER-5725
 - . . . tax system changes GER-5425
- Business names**
- . limited liability companies GER-1125
 - . limited partnership limited by shares GER-2875
 - . protection GER-7825
 - . public limited companies GER-1600
- Capital**
- . limited liability companies GER-1075
 - . limited partnership limited by shares GER-2925
 - . public limited companies – see Public limited companies
- Capital yields tax**
- . building sector, tax deduction for
 - . . . income GER-5000
 - . dividends GER-4975
- Cartels**
- . agreements, decisions and concerted practices GER-8725
 - . appreciable effects of restrictions GER-8750

- . direct application of German competition rules GER-8850
- . exemptions from prohibition GER-8825
- . SMEs GER-8825
- . fines GER-8775
- . generally GER-8675
- . legal consequences of infringement GER-8775
- . leniency GER-8775
- . nullity GER-8775
- . penalties GER-8775
- . private enforcement GER-8775
- . prohibition GER-8700
- . settlement GER-8775
- . skimming off of economic benefits GER-8775
- . termination GER-8775
- Chancellor** GER-275
- Children**
 - . childcare provisions GER-5925(7); GER-6375
 - . income tax, family allowances GER-4725
- Church tax** GER-4900
- Civil Code**
 - . partnerships under GER-3275
- Co-determination** – see Employee co-determination
- Collective bargaining agreements**
 - . Collective Bargaining Agreements Act GER-5925(3)
 - . employers' associations GER-5975
 - . freedom of association GER-5950
 - . range and scope GER-6000
 - . trade unions GER-5975
- Commercial partnerships see also General partnerships see also Limited partnerships**
 - . generally GER-2775
- Companies**
 - . equity investment companies GER-4100
 - . group structure – see Groups of companies
 - . limited liability – see Limited liability companies
 - . partnerships, distinction GER-2775
 - . public limited – see Public limited companies
 - . restructuring – see Restructuring of companies
 - . small and medium-sized – see Small and medium-sized enterprises (SMEs)
 - . taxation – see Corporation tax
- Comparative advertising**
 - . examples GER-10125
 - . generally GER-10100
 - . meaning GER-10100
- Competition rules**
 - . abuse of dominant position/market strength
 - abuse of dominance GER-9125
 - companies with relative or significant market power GER-9150
 - EU law – see EU competition law
 - generally GER-8900; GER-9100
 - . EU law – see EU competition law
 - . generally GER-8000
 - . investment restrictions GER-3550
 - . merger control – see Merger control
 - . prohibition of restrictive practices
 - agreements, decisions and concerted practices GER-8450
 - appreciable effects GER-8525
 - EU exemptions – see EU competition law
 - fines GER-8550
 - generally GER-8425
 - legal consequences of infringement GER-8550
 - leniency GER-8550
 - nullity GER-8550
 - penalties GER-8550
 - private enforcement GER-8550
 - restriction of competition GER-8500
 - settlement GER-8550
 - termination GER-8550
 - trade between EU Member States GER-8475
 - . restrictive horizontal practices, prohibition
 - cartels – see Cartels
 - generally GER-8400
 - meaning GER-8400
 - . sources of law
 - abolition of form requirement GER-8200
 - applicability of rules GER-8225
 - EU – see EU competition law
 - form requirement, abolition of GER-8200
 - generally GER-8150
 - main categories GER-8175
 - unfair – see Unfair competition rules
 - . vertical restraints
 - EU law GER-8650
 - generally GER-8400; GER-8875
 - meaning GER-8400
 - vertical agreements, meaning GER-8650
- Constitution** GER-050; GER-375(1)
- Constitutional bodies and principles** – see Political system
- Consumer credit** – see Consumer protection and sales conditions
- Consumer goods**
 - . sale of GER-11325
- Consumer protection and sales conditions**
 - . consumer credit
 - connected transactions GER-11100
 - credit broker contracts GER-11125
 - duty to inform GER-11025
 - failure to comply with requirements GER-11050
 - generally GER-11000
 - right of withdrawal GER-11075
 - written contracts GER-11025
 - . consumer rights provisions
 - burden of proof GER-10975
 - distance contracts GER-10900
 - electronic commerce agreements GER-10950
 - general principles GER-10900
 - non-gratuitous consumer contracts GER-10900
 - off-premises contracts GER-10900

- . . . right of withdrawal GER-10925
- . . . scope of application GER-10975
- . . . contract formation – see Contracts
- . . . contracts contrary to public policy
 - . . . generally GER-11150
 - . . . usury GER-11175
 - . . . generally GER-10550; GER-10675
- . . . international sale of goods contracts
 - . . . basic principles GER-11225
 - . . . generally GER-11200
 - . . . UN Convention on Contracts for International Sale of Goods GER-11200
- . . . warranty – see Warranty
- . . . labelling and information
 - . . . foodstuffs GER-11800
 - . . . general provisions GER-11650
 - . . . generally GER-11625
 - . . . hazardous substances GER-11725
 - . . . pharmaceutical products GER-11750
 - . . . special provisions GER-11675; GER-11700; GER-11725; GER-11750; GER-11775; GER-11800
 - . . . technical appliances GER-11700
 - . . . textiles GER-11775
- . . . product liability – see Product liability
- . . . standard terms and conditions
 - . . . generally GER-10700
 - . . . inclusion in contracts GER-10725
 - . . . injunctions GER-10875
 - . . . invalidity GER-10800
 - . . . language GER-10750
 - . . . scope of application GER-10825
 - . . . surprising clauses GER-10775
 - . . . unfair contract terms GER-10850
- . . . unfair competition rules – see Unfair competition rules
- Contracts**
 - . . . consumer credit
 - . . . connected transactions GER-11100
 - . . . credit broker contracts GER-11125
 - . . . duty to inform GER-11025
 - . . . failure to comply with requirements, consequences GER-11050
 - . . . generally GER-11000
 - . . . right of withdrawal GER-11075
 - . . . written contacts GER-11025
 - . . . consumer rights provisions
 - . . . burden of proof GER-10975
 - . . . distance contracts GER-10900
 - . . . electronic commerce agreements GER-10950
 - . . . general principles GER-10900
 - . . . non-gratuitous consumer contracts GER-10900
 - . . . off-premises contracts GER-10900
 - . . . right of withdrawal GER-10925
 - . . . scope of application GER-10975
 - . . . door-to-door sales – see Consumer protection and sales conditions
 - . . . employment – see Employment contracts
 - . . . formation, consumer protection
 - . . . formal requirements GER-10625
 - . . . freedom of contract GER-10650
 - . . . generally GER-10575
 - . . . offer and acceptance GER-10600
 - . . . sale of goods – see Consumer protection and sales conditions
 - . . . standard terms and conditions
 - . . . generally GER-10700
 - . . . inclusion GER-10725
 - . . . injunctions GER-10875
 - . . . invalidity GER-10800
 - . . . language GER-10750
 - . . . scope of application GER-10825
 - . . . surprising clauses GER-10775
 - . . . unfair contract terms GER-10850
- Copyright**
 - . . . author's rights GER-7925
 - . . . generally GER-7875
 - . . . infringement GER-7950
 - . . . licence GER-7975
 - . . . moral rights GER-7925
 - . . . origin GER-7900
 - . . . period of protection GER-7925
 - . . . property rights GER-7925
 - . . . restrictions GER-7925
 - . . . software GER-7075
 - . . . transfer GER-7975
- Corporation tax**
 - . . . calculation
 - . . . costs GER-4450
 - . . . depreciation GER-4425
 - . . . generally GER-4400
 - . . . loss carry-back and carry-forward GER-4500
 - . . . profits from sale GER-4475
 - . . . system change in 2002 GER-4375
 - . . . changes GER-4175
 - . . . generally GER-4325
 - . . . interest barrier rule GER-4550
 - . . . rates GER-4350
 - . . . reorganisation of companies GER-4575
 - . . . tax groups GER-4525
 - . . . taxable income, determination GER-4400
 - . . . thin capitalisation rules GER-4550
- Court system**
 - . . . administrative courts GER-14050
 - . . . appeals GER-13675; GER-13700
 - . . . civil jurisdiction at first instance
 - . . . effect of filing claim GER-13625
 - . . . factual GER-13575
 - . . . filing claim GER-13600
 - . . . generally GER-13525
 - . . . international GER-13550
 - . . . local GER-13575
 - . . . procedure following filing of claim GER-13650
 - . . . civil jurisdiction at second instance GER-13675
 - . . . civil jurisdiction at third instance GER-13700
 - . . . costs

- . . . court costs GER-13900
- . . . generally GER-13875
- . . . legal costs GER-13900
- . . . documentary summary proceedings GER-13750
- . . . employment courts GER-5925(12); GER-14025
- . . . execution proceedings GER-14000
- . . . Federal Constitutional Court – see Federal Constitutional Court
- . . . interim injunction GER-13775; GER-13825
- . . . lawyers' fees GER-13925
- . . . non-judicial proceedings
- . . . arbitration – see Arbitration
- . . . enforceable deed GER-13950
- . . . proceedings to take evidence GER-13850
- . . . seizure GER-13775; GER-13800
- . . . social division GER-14075
- . . . structure GER-13500
- . . . summary proceedings GER-13725
- . . . tax courts GER-4250; GER-14100
- Credit system** – see Finance
- Cross-border mergers** GER-2600
- Customary law** GER-425
- Customs** – see Exports – see Imports
- Debt financing**
- . . . public limited companies GER-1875
- Definitions and meanings**
- . . . agreement GER-8450
- . . . branch office GER-3375
- . . . broker GER-875
- . . . brokering GER-875
- . . . bundle sales GER-9925
- . . . bundling GER-9050
- . . . collective agreement GER-5925(3)
- . . . comparative advertising GER-10100
- . . . concentration GER-9350
- . . . concerted practice GER-8450
- . . . connected transactions GER-11100
- . . . consumer contract GER-10900
- . . . consumers GER-8600; GER-10900
- . . . distance contract GER-10900
- . . . dominant position GER-9000
- . . . dual-use goods GER-875
- . . . enterprise GER-2350
- . . . factoring GER-4150
- . . . horizontal practices GER-8400
- . . . income GER-4775
- . . . large companies GER-1350
- . . . limited liability company GER-1050
- . . . manufacture GER-11475
- . . . medium-sized companies GER-1350
- . . . off-premise contract GER-10900
- . . . patent ambushng GER-9050
- . . . product GER-11450
- . . . public limited company GER-1400
- . . . relevant geographic market GER-9400
- . . . relevant product market GER-9400
- . . . service inventions GER-7275
- . . . shelf GmbH GER-1075
- . . . small companies GER-1350
- . . . topographies GER-7550
- . . . trader GER-10900
- . . . tying GER-9050
- . . . undertaking GER-8450
- . . . vertical agreements GER-8400; GER-8650
- Demergers**
- . . . generally GER-2625
- . . . hive-off GER-2650
- . . . procedure GER-2675
- . . . split off GER-2650
- . . . types GER-2650
- Directors**
- . . . managing – see Limited liability companies
- Dissolution**
- . . . limited liability companies GER-1375
- . . . limited partnership limited by shares GER-3100
- . . . public limited companies
- grounds GER-2275
- procedures GER-2300
- Distance contracts**
- . . . consumer rights GER-10900
- Dividends**
- . . . capital yields tax GER-4975
- Double taxation agreements**
- . . . generally GER-4275
- . . . US–German GER-4300
- Dual-use goods**
- . . . exports
- licence requirements GER-900
- restrictions GER-875
- Electronic commerce agreements**
- . . . consumer rights GER-10950
- Employee co-determination**
- . . . Act on the One-Third Representation of the Work Force on the Supervisory Board GER-2225
- . . . generally GER-6750; GER-6850
- . . . public limited companies
- Co-determination Act GER-2250
- generally GER-2175
- ‘Montan’ Co-determination Act GER-2200
- Employee inventions** – see Inventions
- Employers' associations** GER-5975
- Employment contracts**
- . . . board members GER-6125
- . . . content GER-6075
- . . . entering into GER-6050
- . . . fixed-term GER-5925(9); GER-6100
- . . . form GER-6075
- . . . managing directors GER-6125
- . . . termination – see Termination of employment
- Employment law**
- . . . courts GER-5925(12); GER-14025
- . . . employer–employee relationship
- Basic Law GER-5900
- Civil Code GER-5925(14)
- collective bargaining agreements – see Collective bargaining agreements
- company practice/policy GER-6200
- contracts – see Employment contracts

- . . . Employment Court Act GER-5925(12)
- . . . Enhancement of Company Pension Schemes Act GER-5925(10)
- . . . EU law GER-6225
- . . . federal laws GER-5925
- . . . General Equal Treatment Act . . . GER-5925(4)
- . . . generally GER-5875
- . . . Insolvency Act GER-5925(11)
- . . . leave to care for close relative . . GER-5925(8)
- . . . legal sources GER-5875
- . . . maternity and childcare provisions GER-5925(7)
- . . . Paid Leave Act GER-5925(5)
- . . . Part-time and Fixed-term Employment Act GER-5925(9)
- . . . post-termination restrictions on competition GER-6175
- . . . Protection Against Dismissal Act GER-5925(1)
- . . . Regulation on Working Hours . . . GER-5925(15)
- . . . Sick Pay Act GER-5925(6)
- . . . social insurance GER-5925(13)
- . . . transfer of business/change of employer GER-6150
- . . . works agreement GER-6025
- . . . Works Council Constitution Act GER-5925(2)
- . . . employers' obligations
- . . . expenses GER-6425
- . . . generally GER-6275
- . . . holidays GER-6300; GER-6325
- . . . maternity and childcare leave GER-6375
- . . . remuneration GER-6250
- . . . sick pay GER-6350
- . . . social insurance GER-6450
- . . . taxes GER-6400
- . . . financial market crisis, effect GER-5825
- . . . generally GER-5825; GER-5850
- . . . legislative reform GER-5825
- . . . protection of employees in workplace GER-12650
- . . . termination of employment – see Termination of employment
- . . . works councils – see Works councils
- Entrepreneurial company**
- . . . general partner in GmbH & Co KG . . . GER-3110
- . . . generally GER-1385
- Environmental liability**
- . . . civil liability
- . . . Environmental Liability Act GER-12750
- . . . generally GER-12725; GER-12775
- . . . neighbours' claims GER-12850
- . . . tort, claims in GER-12800
- . . . water pollution, claims GER-12825
- . . . criminal liability GER-12875
- . . . generally GER-12675
- . . . public responsibility GER-12700
- Environmental rules**
- . . . administrative acts GER-11900
- . . . basic principles GER-11850
- . . . business operations, demands on
- . . . basic duties GER-12550
- . . . biological safety officer GER-12575
- . . . employee protection GER-12650
- . . . official supervision GER-12600
- . . . plant pollution control officer GER-12575
- . . . supplementary directions from supervisory body GER-12625
- . . . waste management concept GER-12575
- . . . water monitoring officer GER-12575
- . . . choice of site
- . . . lease agreement GER-12275
- . . . planning law – see Planning law
- . . . purchase of property and buildings, agreement GER-12250
- . . . underground pollution – see Underground pollution
- . . . development GER-11875
- . . . environmental associations, special legal protection rights GER-11900
- . . . Environmental Information Act GER-13025
- . . . EU law GER-11825
- . . . federal law GER-11825
- . . . legal sources GER-11825
- . . . liability – see Environmental liability
- . . . permit requirements – see Permits
- . . . planning law – see Planning law
- . . . plant closure, procedure GER-12900
- . . . sale of products
- . . . licensing and labelling requirements GER-12975
- . . . manufacturing and marketing prohibitions GER-12950
- . . . product liability GER-12925
- . . . transport GER-13000
- . . . state law GER-11825
- . . . zoning – see Planning law
- Equal treatment** GER-5925(4)
- Equity investment companies** GER-4100
- EU – see European Union (EU)**
- EU competition law**
- . . . abuse of dominant position
- . . . abusive exploitation GER-9050
- . . . additional exclusionary conduct . . . GER-9050
- . . . bundling GER-9050
- . . . discount systems GER-9050
- . . . discrimination GER-9050
- . . . dominant position GER-8950; GER-8975; GER-9000
- . . . essential facilities doctrine GER-9050
- . . . generally GER-8925
- . . . justification GER-9050
- . . . loyalty rebates GER-9050
- . . . margin squeeze GER-9050
- . . . predatory pricing GER-9050
- . . . progressive rebates GER-9050
- . . . refusal to contract GER-9050

- . . relevant and geographic product
 - market GER-8975
 - . . single and collective dominance GER-9000
 - . . substantial part of EU requirement GER-9025
 - . . trade between Member States GER-9050
 - . . tying GER-9050
 - . . unfair competition GER-9050
 - . . applicability GER-8075
 - . art.101 and 102 of treaty, direct
 - application GER-8125
 - . block exemptions GER-8625
 - . coherent application and enforcement
 - . . cooperation between Commission and Member States' authorities GER-8275
 - . . cooperation with Member States' courts GER-8300
 - . . decisions by Commission GER-8325
 - . . generally GER-8250
 - . . investigation powers of the Commission GER-8350
 - . essential facilities doctrine, meaning GER-9050
 - . exemption from prohibition on restrictive practices
 - . block exemptions GER-8625
 - . exception rule in art.101(3) GER-8600
 - . generally GER-8575
 - . generally GER-8025
 - . information exchange between Commission and member States' competition authorities GER-8375
 - . main categories GER-8050
 - . refusal to contract, meaning GER-9050
 - . trade between Member States GER-8100
 - . vertical agreements GER-8650
- EU merger control**
- . Community dimension
 - . generally GER-9275
 - . thresholds GER-9300
 - . turnover GER-9325
 - . concept of concentration GER-9350
 - . European Commission
 - . exclusive jurisdiction GER-9375
 - . notices GER-9225
 - . examination/substantial appraisal
 - . ancillary restraints GER-9425
 - . commitments and remedies GER-9450
 - . compatibility with EU GER-9400
 - . SIEC test GER-9400
 - . first phase examination GER-9500
 - . full-function joint ventures GER-9360
 - . generally GER-9200
 - . informal preliminary consultation GER-9500
 - . legislation GER-9225
 - . merger control regulation,
 - amendments GER-9250
 - . prior notification GER-9475
 - . procedural aspects GER-9500
 - . prohibition to implement prior to clearance GER-9475
 - . second phase examination GER-9500
 - . simplified procedure GER-9500
- European Economic Interest Groupings** GER-3400
- European Union (EU)**
- . Common European Sales Law GER-10550
 - . Community registered designs GER-7475
 - . competition rules – see EU competition law
 - . consumer rights GER-10900
 - . employment law GER-6225
 - . environmental rules GER-11825
 - . excise duties GER-5400
 - . exports, dual-use goods GER-875
 - . imports
 - . . licences, quotas GER-700
 - . merger control – see EU merger control
 - . patents GER-6900
 - . trade law GER-550
 - . unfair contract terms GER-10850
- Excise duties** GER-775; GER-5400
- Exports**
- . EU law GER-550
 - . export list
 - . . dual-use goods GER-875
 - . . generally GER-850
 - . . licence requirement GER-900
 - . . foreign trade GER-500
 - . . generally GER-800
 - . . international agreements GER-550
 - . . legal framework GER-525; GER-800
 - . . licence
 - . . application GER-950
 - . . consequences of absence GER-1000
 - . . dual-use goods GER-900
 - . . rejection of application GER-975
 - . . military arms control GER-800
 - . . restrictions GER-825
- Factories**
- . construction and operation – see Permits
- Factoring** GER-4150
- Federal Constitutional Court**
- . decisions GER-400(2)
 - . generally GER-350; GER-13500
- Federal Court of Justice** GER-13700
- Federal states** GER-100
- Finance**
- . asset-backed securitisation GER-4150
 - . credits
 - . . generally GER-3800
 - . . medium- and long-term GER-3850
 - . . short-term GER-3825
 - . equity investment companies GER-4100
 - . factoring GER-4150
 - . generally GER-3775
 - . investment funds GER-4025
 - . leasing GER-4125
 - . participating certificates GER-4075
 - . Real Estate Investment Trusts GER-4050
 - . stock exchanges – see Stock exchanges

- Fines** – see Offences and penalties
- Fire tax** GER-5375
- Foodstuffs**
 - . labelling and information, consumer protection GER-11800
- Foreign trade** – see Exports – see Imports
- General Agreement on Tariffs and Trade (GATT)** GER-550
- General partnerships**
 - . commercial register, entry GER-3175
 - . generally GER-3150
 - . liability GER-3225
 - . management and representation GER-3250
 - . name GER-3200
- Geography** GER-025
- German Democratic Republic (GDR)**
 - . unification GER-475
- Gifts**
 - . taxation
 - . . changes GER-4175
- GmbH** – see Limited liability companies
- GmbH & Co KG** – see Limited partnership with GmbH as general partner
- GmbH light** GER-1385
- Gross domestic product (GDP)** GER-025
- Groups of companies**
 - . limited liability companies
 - . . consequences GER-2450
 - . . generally GER-2400
 - . . prerequisites GER-2425
 - . public limited companies
 - . . concept of ‘affiliated enterprise’ ... GER-2350
 - . . consequences of affiliation GER-2375
 - . . generally GER-2325
- Hazardous substances**
 - . environmental protection
 - . . licensing and labelling requirements GER-12975
 - . . manufacturing and marketing prohibitions GER-12950
 - . . transport GER-13000
 - . labelling and information
 - . . consumer protection GER-11725
 - . . environmental protection GER-12975
- Holidays**
 - . annual leave GER-6300
 - . Paid Leave Act GER-5925(5)
 - . public GER-6325
- Imports**
 - . customs clearance GER-775
 - . customs duty GER-775
 - . EU
 - . . import list GER-625
 - . . EU law GER-550
 - . excise tax GER-775
 - . foreign trade GER-500
 - . import turnover tax GER-775
 - . international agreements GER-550
 - . legal framework GER-525
 - . licence
 - . . application GER-650
 - . . approval of application GER-725
 - . . EU quotas GER-700
 - . . facilitated procedure for agricultural and other goods GER-675
 - . . import list, EU imports GER-625
 - . . rejection of application GER-725
 - . . validity of contract GER-750
 - . . non-EU GER-600
- Incentives for business** – see Business incentives
- Income tax** – see Corporation tax – see Personal income tax
- Industrial and intellectual property**
 - . copyright – see Copyright
 - . distinguishing features of commercial utilisation GER-7650; GER-7825
 - . employee inventions
 - . . generally GER-7250
 - . . independent inventions GER-7300
 - . service inventions GER-7275
 - . generally GER-6875
 - . patents – see Patents
 - . plant varieties
 - . . generally GER-7500
 - . . scope of protection GER-7525
 - . registered designs – see Registered designs
 - . semiconductor topographies – see Semiconductor topographies
 - . trade marks – see Trade marks
 - . utility models – see Utility models
- Inheritance tax**
 - . changes GER-4175
 - . generally GER-5150
- Insolvency**
 - . employee provisions in Insolvency Act GER-5925(11)
- Insurance tax** GER-5375
- Intellectual property** – see Industrial and intellectual property
- International commercial shipping**
 - . tax incentives GER-5600
- Internet domains**
 - . trade mark protection GER-7850
- Inventions**
 - . employees
 - . . generally GER-7250
 - . . independent inventions GER-7300
 - . service inventions GER-7275
 - . patents – see Patents
 - . utility models – see Utility models
- Investment**
 - . company and investors’ protection, notification obligations GER-3750
 - . freedom of commerce and investment
 - . . limitations GER-3525
 - . . generally GER-3475
 - . restrictions

- . . Act regarding Public Offers and Acquisition of Security 2002 GER-3600
- . . competition law GER-3550
- . . transfer of shares GER-3575
- . statistical notification obligations
 - . . basis of investment GER-3700
 - . . generally GER-3650; GER-3675
 - . . sanctions GER-3725
 - . . termination GER-3625
- Investment funds** GER-4025
- Joint ventures**
 - . . merger control GER-9360; GER-9610
- Judicial decisions** – see Legal authority
- Lawyers**
 - . . fees GER-13925
- Leased property** GER-12275
- Leasing** GER-4125
- Legal authority**
 - . . customary law GER-425
 - . . international law GER-450
 - . . judicial decisions
 - . . . duty to refer GER-400(1)
 - . . . Federal Constitutional Court, decisions GER-400(2)
 - . . . interpretation of law GER-400(3)
 - . . written law
 - . . . administrative regulations GER-375(5)
 - . . . by-laws GER-375(4)
 - . . . constitution GER-375(1)
 - . . . federal states, law of GER-375(6)
 - . . . laws GER-375(2)
 - . . . regulations GER-375(3)
- Liability**
 - . . environmental – see Environmental liability
 - . . general partnerships GER-3225
 - . . limited liability companies GER-1275
 - . . limited partnerships limited by shares GER-2950
 - . . public limited companies GER-1575
 - . . underground pollution
 - . . . fault-based liability GER-12225
 - . . . generally GER-12175
 - . . . strict liability GER-12200
- Licences see also Permits**
 - . . copyright GER-7975
 - . . export – see Exports
 - . . import – see Imports
 - . . patents GER-7050
 - . . registered designs GER-7450
 - . . semiconductor topographies GER-7625
 - . . trade marks GER-7800
 - . . utility models GER-7225
- Limited liability companies**
 - . . accounting and reporting duties GER-1350
 - . . advisory board GER-1325
 - . . AG, differences GER-1425
 - . . articles of association GER-1075; GER-1150
 - . . bankruptcy GER-1375
 - . . business letters, details GER-1125
 - . . capital requirements GER-1075
 - . . commercial register, application GER-1100
 - . . dissolution GER-1375
 - . . entrepreneurial company GER-1385
 - . . formation GER-1075
 - . . generally GER-1050
 - . . GmbH light GER-1385
 - . . group structure – see Groups of companies
 - . . large companies GER-1350
 - . . liquidation GER-1375
 - . . managing directors
 - . . . annual financial statement and report, presentation GER-1350
 - . . appointment GER-1225
 - . . dismissal GER-1225
 - . . duties GER-1250
 - . . employment contracts GER-6125
 - . . liability GER-1275
 - . . limited partnership limited by shares GER-2975
 - . . shareholders meeting, calling GER-1300
 - . . meaning GER-1050
 - . . medium-sized companies GER-1350
 - . . mini-GmbH GER-1385
 - . . name GER-1125
 - . . pre-incorporated company GER-1075
 - . . relevance GER-1050
 - . . shareholders – see Shareholders
 - . . shares, transfer
 - . . . restrictions GER-3575
 - . . . shelf GmbH GER-1075
 - . . small companies GER-1350
 - . . sole shareholder GmbH GER-1175
 - . . supervisory board GER-1325
 - . . termination GER-1375
- Limited partnership with GmbH as general partner**
 - . . accounts GER-3075
 - . . business letters, details GER-2875
 - . . capital structure GER-2925
 - . . commercial register, application GER-2850
 - . . dissolution GER-3100
 - . . entrepreneurial company as general partner GER-3110
 - . . formation GER-2825
 - . . generally GER-2800
 - . . liability GER-2950
 - . . liquidation GER-3100
 - . . management and representation GER-2975
 - . . name GER-2875
 - . . new partner, admission GER-3000
 - . . partnership agreement GER-2900
 - . . termination GER-3100
 - . . transfer of interest in partnership GER-3025
 - . . withdrawal of partner GER-3050
- Limited partnerships**
 - . . generally GER-3125
 - . . limited with GmbH as general partner – see Limited partnership with GmbH as general part-

- ner
- Liquidation**
 - limited liability company GER-1375
 - limited partnership limited by shares GER-3100
- Management board**
 - public limited companies
 - authority GER-1925
 - composition GER-1975
 - financial statement and report,
 - preparation GER-2150
 - generally GER-1475
 - organisation GER-1950
 - responsibilities GER-1925; GER-2000
 - role GER-1925
 - transparency and public disclosure GER-1925
- Managing directors**
 - limited liability companies – see Limited liability companies
- Maternity**
 - employment law GER-5925(7); GER-6375
- Merger control**
 - concept of concentration GER-9600
 - EU rules – see EU merger control
 - examination/substantive appraisal GER-9650
 - foreign concentrations GER-9725
 - generally GER-9175; GER-9525
 - joint ventures GER-9610
 - notification GER-9625
 - post-merger notification GER-9550
 - pre-merger notification GER-9550
 - procedural aspects GER-9675
 - prohibition to implement prior to
 - clearance GER-9550
 - third-party action GER-9700
 - turnover thresholds GER-9575
- Mergers**
 - consequences GER-2550
 - control – see Merger control
 - cross-border GER-2600
 - procedure GER-2575
 - types GER-2525
- Mini-GmbH** GER-1385
- Misleading commercial practices**
 - examples GER-10075
 - generally GER-10050
- Nature conservation**
 - planning law GER-12100
- New businesses**
 - tax incentives GER-5675
- Offences and penalties**
 - competition rules GER-8550
 - copyright infringement GER-7950
 - investment
 - company and investors' protection,
 - notification GER-3750
 - statistical notification GER-3725
 - merger control, prior notification GER-9475; GER-9550
 - patent infringement GER-7025
 - semiconductor topographies GER-7625
 - tax avoidance/evasion GER-4225
 - trade mark infringement GER-7775
 - unfair competition rules – see Unfair competition rules
 - utility models, infringement GER-7200
- Off-premises contracts**
 - consumer rights GER-10900
- Origin of goods**
 - geographical details, protection GER-7825
- Parliament**
 - lower house (Bundestag) GER-250
 - upper house (Bundesrat) GER-300
- Participating certificates** GER-4075
- Partnerships**
 - Civil Code, under GER-3275
 - commercial GER-2775
 - companies, distinction GER-2775
 - general – see General partnerships
 - generally GER-2775
 - limited – see Limited partnerships
 - silent GER-3300
 - sub-participations GER-3325
 - trusts GER-3350
- Part-time work** GER-5925(9)
- Patents**
 - application GER-6925
 - European patent GER-6900
 - generally GER-6900
 - grant
 - legal effects GER-7000
 - objection GER-6975
 - infringement GER-7025
 - licence GER-7050
 - owner's rights GER-7000
 - period of protection GER-7000
 - software GER-7075
 - transfer GER-7050
 - unitary patent GER-6900
- Pensions**
 - Enhancement of Company Pension Schemes Act GER-5925(10)
- Permits see also Licences**
 - Federal Emissions Protection Act, permits under
 - basic duties of operators GER-12425
 - changes to existing plant GER-12450
 - exceptions GER-12525
 - plants and factories GER-12400
 - premature commencement GER-12475
 - purpose of act GER-12375
 - requirements GER-12425
 - supplementary directions GER-12500
 - planning permission – see Planning permission
- Personal income tax**
 - allowances GER-4700
 - assessment GER-4875
 - changes GER-4175
 - child allowances GER-4725
 - family allowances GER-4725

- . generally GER-4675
- . rates GER-4700
- . returns GER-4875
- . taxable income
 - . . basis for assessment GER-4825
 - . . capital gains GER-4800
 - . . generally GER-4750
 - . . losses GER-4850
 - . . meaning of income GER-4775
 - . . minimum taxation GER-4850
 - . . taxable person, assessment GER-4875
- Pharmaceutical products**
 - . labelling and information, consumer protection GER-11750
- Planning law**
 - . consultant planning GER-12075
 - . generally GER-11925
 - . nature conservation GER-12100
 - . permission – see Planning permission
 - . urban planning – see Urban planning
- Planning permission**
 - . generally GER-12300
 - . neighbours' rights GER-12325
 - . procedure on building intention GER-12350
- Plant varieties**
 - . protection
 - . . generally GER-7500
 - . . scope GER-7525
- Political system**
 - . Basic Law GER-050
 - . constitutional bodies
 - . . Bundesrat GER-300
 - . . Bundestag GER-250
 - . . Federal Constitutional Court GER-350
 - . . federal government GER-275
 - . . Federal President GER-325
 - . . generally GER-225
 - . constitutional principles
 - . . democracy GER-125
 - . . federal state GER-100
 - . . generally GER-075
 - . . republic GER-150
 - . . rule of law GER-175
 - . . social state GER-200
- Pollution**
 - . underground – see Underground pollution
 - . water GER-12825
- Population** GER-025
- President** GER-325
- Product liability**
 - . environmental rules GER-12925
 - . generally GER-11400
 - . Product Liability Act
 - . . exclusion of liability GER-11500
 - . . generally GER-11425
 - . . manufacturer GER-11475
 - . . product defect GER-11450
 - . . scope of liability GER-11525
 - . . tort
 - . . burden of proof, relaxation GER-11600
 - . . generally GER-11550
 - . . negligent act of infringement GER-11575
- Public limited companies**
 - . accounts GER-2150
 - . articles of association GER-1625
 - . capital structure
 - . . debt financing GER-1875
 - . . generally GER-1650
 - . . increase of share capital GER-1825
 - . . maintenance of capital GER-1800
 - . . nil par value shares, introduction GER-1700
 - . . payment of capital contributions GER-1750; GER-1775
 - . . reduction of share capital GER-1850
 - . . registered shares, amendments to
 - rules GER-1725
 - . . share capital GER-1675
 - . . shares GER-1675
 - . disclosure duties GER-2150
 - . dissolution
 - . . grounds GER-2275
 - . . procedures GER-2300
 - . employee co-determination – see Employee co-determination
 - . formation
 - . . liability GER-1575
 - . . pre-existing business GER-1500
 - . . procedure GER-1525
 - . . qualified formation GER-1550
 - . . generally GER-1400
 - . . GmbH, differences GER-1425
 - . group structure – see Groups of companies
 - . management board – see Management board
 - . meaning GER-1400
 - . name GER-1600
 - . relevance GER-1450
 - . shareholders' meetings – see Shareholders' meetings
 - . shares, transfer GER-1900; GER-3575
 - . statistics GER-1450
 - . supervisory board – see Supervisory boards
 - . two-tier board system GER-1475
- Rates of tax**
 - . capital yields tax, dividends GER-4975
 - . church tax GER-4900
 - . corporation tax GER-4350
 - . fire tax GER-5375
 - . income tax GER-4700
 - . inheritance and gift tax GER-5150
 - . insurance tax GER-5375
 - . payments to non-resident members of supervisory board GER-5075
 - . real estate transfer tax GER-5325
 - . real property tax GER-4650
 - . solidarity surcharge GER-4925
 - . trade tax GER-4625
 - . value added tax GER-5200
 - . vehicle road tax GER-5350

- Real Estate Investment Trusts (REITs)** GER-4050
- Real estate transfer tax** GER-5325
- Real property tax** GER-4650
- Registered designs**
 - . application GER-7375
 - . Community designs GER-7475
 - . development of protection GER-7325
 - . generally GER-7350
 - . infringement GER-7425
 - . legal consequences GER-7425
 - . licence GER-7450
 - . registration GER-7400
 - . transfer GER-7450
- Restructuring of companies**
 - . generally GER-2475
 - . Reorganisation Act
 - . . change of form GER-2725
 - . . demergers – see Demergers
 - . . generally GER-2500
 - . . mergers – see Mergers
 - . . restructuring outside scope of GER-2750
 - . . transfer of assets GER-2700
 - . . taxation GER-4575
- Sales conditions** – see Consumer protection and sales conditions
- Semiconductor topographies**
 - . protection
 - . . application for registration GER-7575
 - . . generally GER-7550
 - . . infringement GER-7625
 - . . licence GER-7625
 - . . meaning of topographies GER-7550
 - . . owner's rights GER-7625
 - . . period of GER-7625
 - . . registration GER-7600
 - . . transfer GER-7625
- Share capital**
 - . public limited companies
 - . . increase GER-1825
 - . . reduction GER-1850
- Shareholders**
 - . affiliated enterprise, protection GER-2375
 - . limited liability companies
 - . . meetings GER-1300
 - . . resolutions GER-1300
 - . . rights GER-1300
 - . . transfer of holdings GER-1200
 - . meetings – see Shareholders' meetings
 - . public limited companies GER-1675
- Shareholders' meetings**
 - . limited liability companies GER-1300
 - . public limited companies
 - . . competence GER-2100
 - . . duties GER-2100
 - . . formal simplification GER-2125
 - . . organisation GER-2125
 - . . powers GER-2100
 - . . resolutions GER-2125
 - . . voting rights GER-2125
- Shares**
 - . Act regarding Public Offers and Acquisition of Security 2002 GER-3600
 - . limited liability companies, transfer
 - . . restrictions GER-3575
 - . . public limited companies
 - . . nil par value shares GER-1700
 - . . transfer GER-1900; GER-3575
 - . . registered, amendments to rules GER-1725
 - . . trading on stock exchanges – see Stock exchanges
- Shelf GmbH** GER-1075
- Sick pay** GER-5925(6); GER-6350
- Silent partnerships** GER-3300
- Small and medium-sized enterprises (SMEs)**
 - . accounting and reporting GER-1350
 - . cartels GER-8825
 - . meaning GER-1350
 - . tax incentives, savings allowance GER-5625
- Social insurance**
 - . generally GER-5925(13); GER-6450
 - . social courts GER-14075
- Societas Europaea (SE)** GER-3450
- Software**
 - . protection GER-7075
- Sole proprietorships** GER-3425
- Sole shareholder GmbH** GER-1175
- Solidarity surcharge** GER-4925
- Stock corporations** – see Public limited companies
- Stock exchanges**
 - . Entry Standard GER-4000
 - . former regulated market GER-3925
 - . General Standard GER-4000
 - . generally GER-3875
 - . new market GER-3975
 - . Prime Standard GER-4000
 - . regulated market GER-3900
 - . regulated unofficial market GER-3950
- Supervisory boards**
 - . co-determination by employees GER-6850
 - . limited liability companies GER-1325
 - . payments to non-resident members, withholding tax GER-5075
 - . public limited companies
 - . . composition GER-2050
 - . . duties GER-2025
 - . . responsibilities GER-2075
- Taxation**
 - . administration GER-4225
 - . assessment GER-4225
 - . church tax GER-4900
 - . corporation tax – see Corporation tax
 - . customs duty GER-775
 - . double taxation agreements
 - . . generally GER-4275
 - . . US–German GER-4300
 - . employers' obligations GER-6400
 - . excise duties GER-775; GER-5400
 - . fire tax GER-5375

- . generally GER-4200
- . gift tax GER-5150
- . import turnover tax GER-775
- . inheritance tax GER-5150
- . insurance tax GER-5375
- . major changes to system GER-4175
- . personal income tax – see Personal income tax
- . rates – see Rates of tax
- . real estate transfer tax GER-5325
- . real property tax GER-4650
- . returns GER-4225
- . solidarity surcharge GER-4925
- . tax avoidance/evasion GER-4225
- . tax courts
 - . . . generally GER-14100
 - . . . jurisdiction GER-4250
- . tax groups
 - . . . corporation tax GER-4525
 - . . . trade tax GER-4625
- . tax havens GER-4175
- . tax incentives – see Business incentives
- . trade tax
 - . . . basis of calculation GER-4625
 - . . . generally GER-4600
 - . . . rates GER-4625
- . value added tax – see Value added tax
- . vehicle road tax GER-5350
- . withholding taxes – see Withholding taxes
- Technical appliances**
 - . . . labelling and information, consumer protection GER-11700
- Termination of employment**
 - . . . invalid termination GER-6475
 - . . . notice pending change of contract GER-6550
 - . . . notice periods GER-6525
 - . . . prohibitions GER-6575
 - . . . Protection Against Dismissal Act GER-5925(1)
 - . . . requirements for valid GER-6600
 - . . . with notice GER-6525
 - . . . without notice GER-6500
- Textiles**
 - . . . labelling and information, consumer protection GER-11775
- Trade marks**
 - . . . application GER-7675
 - . . . Community trade mark GER-7650
 - . . . generally GER-7650
 - . . . infringement GER-7775
 - . . . international registered mark GER-7650
 - . . . Internet domains GER-7850
 - . . . legal consequences GER-7750
 - . . . licence GER-7800
 - . . . registration
 - opposition GER-7725
 - transfer GER-7800
- Trade tax**
 - . . . basis of calculation GER-4625
 - . . . generally GER-4600
 - . . . rates GER-4625
- Trade unions** GER-5975
- Trusts** GER-3350
- Underground pollution**
 - . . . authorities' demands GER-12150
 - . . . clean-up GER-12150
 - . . . evaluation of contamination, threshold levels GER-12150
 - . . . generally GER-12125
 - . . . responsible parties GER-12150
 - . . . third party claims
 - fault-based liability GER-12225
 - generally GER-12175
 - strict liability GER-12200
- Unfair competition rules**
 - . . . abuse of dominant position GER-9050
 - . . . bundle sales GER-9925
 - . . . comparative advertising – see Comparative advertising
 - . . . concealing advertising character of competition acts GER-9875
 - . . . disparagement GER-9950
 - . . . enforcement of claims
 - formal warning GER-10375
 - interim injunction GER-10400
 - legal action GER-10425
 - . . . exploitation of goods or services GER-9975
 - . . . games of chance for a prize GER-9900
 - . . . general clauses of legislation GER-9825
 - . . . generally GER-9750
 - . . . infringement of law
 - cease and desist claims GER-10225
 - claims to remove GER-10225
 - damages claim GER-10275
 - disclosure, general claim GER-10300
 - disclosure, special claim GER-10250
 - generally GER-10200
 - limitation period GER-10350
 - profit skimming GER-10325
 - lotteries GER-9900
 - . . . misleading advertising – see Misleading commercial practices
 - . . . penalties
 - business/trade secrets and know-how, protection GER-10500
 - criminal advertising practices GER-10475
 - generally GER-10450
 - protective aims GER-9775
 - scope of application GER-9800
 - systematic obstruction of competitors GER-10000
 - undue influence GER-9850
 - . . . unreasonable harassment
 - electronic communication services, advertisements sent by GER-10175
 - unsolicited communications GER-10150
 - . . . violation of laws regulating market activities GER-10025
- Unification** GER-475
- United Nations (UN)** GER-550

United States

- . double taxation agreement GER-4300

Urban planning

- . development plan GER-11975
- . external area GER-12025
- . freedom to build principle GER-12050
- . generally GER-11950
- . green-belt zone GER-12025
- . mutual consideration GER-12050
- . project-related development plan GER-11975
- . unplanned internal area GER-12000
- . zoning maps GER-12050

Utility models

- . application GER-7125
- . generally GER-7100
- . infringement GER-7200
- . legal effects GER-7175
- . licence GER-7225
- . owner's rights GER-7175
- . period of protection GER-7175
- . registration GER-7150
- . transfer GER-7225

Value added tax

- . basis for calculation GER-5200
- . changes GER-4175
- . exemptions GER-5250
- . generally GER-5175
- . input tax claim GER-5275
- . place of supply GER-5250
- . procedure GER-5300
- . rates GER-5200
- . taxable persons GER-5225
- . taxable supplies GER-5250

Vehicle road tax GER-5350**Wage tax** GER-4950**Wages** GER-6250**Warranty**

- . claims GER-11275

- . consumer goods, sale of GER-11325
- . defects
- . . . notification GER-11350
- . . . generally GER-11250
- . inspection of goods GER-11350
- . limitation period GER-11375

Water pollution

- . environmental liability GER-12825

Withholding taxes

- . capital yields tax
- . . . building sector, tax deduction for
- income GER-5000
- . capital yields tax, dividends GER-4975
- . licence fees and other payments,
- deductions GER-5050
- . repayment/indemnity procedure GER-5100
- . supervisory board, payments to non-resident
- members GER-5075
- . wage tax GER-4950

Working hours GER-5925(15)**Works councils**

- . company policy GER-6200
- . members, remuneration and rights GER-6825
- . powers, restriction GER-6800
- . rights
- . . . change in operations, special
- rights GER-6775
- . . . co-determination/conciliation
- committee GER-6750
- . . . consent requirements GER-6725
- . . . consultation GER-6700
- . . . general rights GER-6675
- . . . members' rights GER-6825
- . . . proposals GER-6700
- . Works Council Constitution Act
- . . . contents GER-6650
- . . . focus GER-6625

World Trade Organisation (WTO) GER-550**Zoning** – see Planning law

