

**Export & Business Guide
To The German Market - 2021
For the Arab Exporter**

By Wolf R. Schwippert, Attorney at Law

4th edition

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Export & Business Guide to the German Market

In the preparation of this publication every effort has been made to submit correct, updated and comprehensive information. However, it may serve, as it is targeted, as a guideline only and shall not replace detailed business or legal advice.

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Preface

Arab-German relations have a good and long tradition. Ever since Charles the Great and Khalif Haroun Al-Rashid established a special relationship based on mutual respect in 798, exchanges and co-operation both in the fields of culture and society as well as in economics and politics have been intense.

In that tradition business and investment relations rely always on the availability of transparent information, ideally tailored for the needs and specific interest of defined business communities.

This book was conceived to offer such information specifically to the Arab business world. The “Export & Business Guide to the German Market” provides the Arab exporter and investor with useful information about the German economy, featuring topics such as import/export regulations, information about investments, subsidies and taxes and a short introduction to the German legislative system.

It gives us great pleasure to introduce the fourth revised and updated edition of the “Export & Business Guide to the German Market”, which has been first published in May 2004. Now, at the entry into this new decade both publisher and author felt, that it would be good to provide the reader with an updated online version reflecting latest developments in Germany, the EU and their relations to the Arab countries.

This new edition comes at a time, where Germany plays a more vital role within the EU, as the United Kingdom has left the EU and therefore external trade and investment relations are to be strengthened and revised based on the experience to be made.

Since the economic relations between Arab countries and Germany have changed in the last years, by Arab investors, including sovereign wealth funds have considerably invested in Germany, this Business Guide now focusses also more on investments, their framework, rather than solely the export business. Nevertheless, increasing exports from Arab countries to the EU will help to diversify Arab economies and should therefore be supported on all levels.

Ghorfa Arab-German Chamber of Commerce & Industry, is proud to offer this helpful instrument to interested businesspeople. The book’s author, Mr. Wolf R. Schwippert, is attorney at law in Berlin and a long-standing and active member of the GHORFA.

Founded in 1976 upon an initiative of Arab and German businessmen, GHORFA understands itself as a bridge between both economies. It is our aim to advise and assist mostly small and medium enterprises but also large companies with their engagement in Germany and in the Arab world and to support them directly. GHORFA is the strong and reliable service partner when it comes to German-Arab business relations.

January 2021

Dr. Peter Ramsauer
President,
Former Federal Minister

Abdulaziz Al-Mikhlaifi
Secretary-General

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1. Introduction to Germany

Germany, situated in central Europe, is the World's fourth largest economy, has about 83 million inhabitants and thus a larger population than any other European country.

As a federal republic with - since its re-unification in 1990 - 16 states, it offers a huge number of opportunities for the foreign exporter and possible investor.

Germany as a member of the European Union has to be seen not only as an exporting economy. In trade with Arab countries, Germany is a key exporter. Germany is also a target market for Arab exports and investments. At the same time, Germany's economy is closely linked with other European economies. Therefore, the Arab exporter should understand Germany not as a single export market, but as a platform to further establish marketing links to other European countries.

1.1 History

German history goes back to ancient times, about 1000 BC, when numerous tribes were in the region, which constitutes today's Germany. The Romans invaded the western parts up to the Rhine River and with them Christianity was spread. After the breakdown of the Roman Empire, the Empire of the Franks took over parts of Germany, which were then extended under the rule of Charles the Great in 790 AC. By the end of the 9th century, this huge empire split into western and eastern parts, on the territories of today's France and Germany. In the 10th and 11th century, the German Empire stretched from northern Germany to the south of Italy and remained that way under the reign of the house of Staufen until the 13th century. A century of turmoil followed, in which local noble rulers established their reign. By the 16th century a new major Christian denomination emerged in Europe as a spin off from the Catholic church, the Lutheran and Calvinist movements, which had influence on various ruling families and their subordinates. War between religious denominations and about territories followed in the early 17th century which ended in a reorganization of European powers by the Westphalian Peace in 1648.

By then influential families had established their rule, namely the Prussian house of Hohenzollern in the north east, the Austrian, Bohemian house of Habsburg in the south and others, e.g. in Saxony and Bavaria. Wars between them followed in the 18th century. By the end of that century, all areas later to constitute Germany and Austria were dominated by the land ownership of smaller noble families along with Prussia and the Austrian/Hungarian ruling family. The Catholic Church owned considerable land. This vast separation was streamlined in the following years. As of the year 1848, efforts were made to unify such German kingdoms by establishing the first parliaments and a customs union. By 1871, Germany had unified itself under the reign of the Prussian emperors, while maintaining the local independence of the various regions to a certain extent. The concept of a federal state had been born, however still as a constitutional monarchy with a parliament.

World War I followed from 1914 to 1918 in alliance with the Ottoman Empire against England, France and Russia and in the end the USA. The treaty of Versailles brought a formal end to the war and at the same time the borders of the Arab world were re-organized as well after the simultaneous destruction of the Ottoman Empire. The first German republic as a fully-fledged democracy was established in the year 1918 and

ended in 1933 with the takeover by the Nazis, who established a dictatorship, prohibited and prosecuted some political parties and neutralized others and started World War II, which Germany lost once again. That resulted in the division of Germany into four zones administered by the allies, the USA, the United Kingdom, France and the Soviet Union. The three western parts became the Federal Republic of Germany, the Eastern – Soviet-administered zone – became the German Democratic Republic. Along with the decline of the Soviet Union, the German Democratic Republic declined as well and was merged with the Federal Republic with the so-called re-unification in 1990.

1.2 Political System

Today's Germany has a federal system, which was established in 1948 when the western Federal Republic of Germany was established.

There are now 16 states, of them 13 states with considerable territory, and three states, which are in fact cities only, which are the cities of Berlin, Bremen and Hamburg. All these states are organised by municipal districts, where local municipal parliaments and their mayors are elected. The states have parliaments, which again are elected by the citizens and by which the respective governments are elected.

Additionally, there is a Federal Parliament (*Deutscher Bundestag*), elected directly by the entire citizens above 18 years of age, which in turn elects the head of government, the Chancellor, who appoints the federal ministers. The ordinary term of the Federal Parliament is 4 years. Unlike e. g. in the USA there is no time restriction for a chancellor to be re-elected.

Besides the federal parliament there is the federal council, which constitutes itself again from the 16 states. Each government of a state has voting rights there depending on the size of that state. Certain laws, which concern major state interests, also require the approval of the federal council next to the approval of the federal parliament. That is why certain state governments, even if from another party than the one forming the federal government, have considerable influence also on a federal level.

The head of state is the German president who is elected for a term of 5 years with the possibility to be re-elected for one second term only by a federal assembly. The president has the formal role of being the head of state, who signs laws into force and who formally appoints the federal chancellor and the federal ministers. All this however the president does, based on the voting of the parliament. It is therefore that the president has little political power.

As the whole system is based on elections, Germany has a good number of political parties, which partially have a tradition of more than a one and a half centuries. The major ones are the conservatives (Christian Democratic Union/Christian Social Union), the labor party (Social Democratic Party, being in the tradition of the labor movement emerged with the industrialization in the second half of the 19th century), the Greens, having emerged from an environmental-friendly movement as of the 1980ies (Greens/Pact 90), the liberals (Free Democratic Party) and the leftists, a socialistic party (Die Linke,, in the tradition of German socialism). There is a considerable number of other parties on the political left and right as well. Parties, which do not achieve 5% of the votes, cannot enter parliament except for in certain

defined cases (minority parties or regional parties). Therefore smaller parties do not play a considerable role. Only one extreme conservative/nationalistic party emerged after being founded in 2013 as a considerable political player, which is Alternative for Germany. That party has managed to join parliaments in Germany as of 2015.

1.3 Geographical Situation

Germany covers an area of 357.022 square kilometres and thus ranks on position no. 61 of all countries in the world. It has joint borders with Denmark in the north, Poland and the Czech Republic in the east, Austria and Switzerland in the south, and France, Luxembourg, Belgium and the Netherlands in the west.

It has two major seaports in Bremen and Hamburg, located at the North Sea. Frankfurt/Main is traditionally Germany's major international airport. However other international airports service regular passenger flights to the Arab World, Asia, Africa and the Americas, such as Munich, Hamburg, Düsseldorf and Berlin. . A considerable share of cargo is also handled by Cologne airport.

The climate in the western parts of Germany is still moderate due to the influence of the Gulf Stream along the eastern Atlantic Ocean. Therefore, the climate there is humid with temperatures in summer of no more than 30°C and in winter rarely below 0°C. A more continental climate prevails in the eastern and south-eastern parts. Temperatures are a little more extreme in the summer there, reaching up to 35°C, and in winter dropping to well into temperatures below 0° C. There is less humidity and consequently less rain and snowfall.

Due to this climate, Germany has an extensive agricultural sector. Cattle are farmed in the north, in particular cows for dairy and meat production. Vegetable farming in certain areas depending on the soil quality and fruits takes place in all the southern parts of Germany. Grapes are produced in the south-west, in particular along the banks of the main rivers in Germany.

The rivers are suited for transporting cargo by ship. The main rivers are the Danube, Rhine, Main, Mosel, Weser, Elbe and Oder. All of them are connected by man-made canals, so that a huge network of inland waterways has been established throughout Germany.

While the landscape in the north is even and not much higher than sea level, mountains dominate the landscape in the south with famous forests like the Harz south of the city of Hanover, the Eifel west of the Rhineland towards the border to Belgium, the Bavarian Forest in the south-east and the Black Forest in the south-west. The Alps are in the south at the borders to Austria and Switzerland.

Due to the historically federal structure of Germany, one cannot say that a certain area or a certain city is actually the center of Germany. There are only four cities with more than one million inhabitants. These are Berlin with 3.6 million, Hamburg and Munich with more than one million and Cologne with about one million inhabitants. However, all cities are close to each other and have vast hinterlands, so that entire areas accommodate huge numbers of inhabitants, like the area at the smaller river Ruhr, the former steel and coal center of Germany, which accommodates more than 5 million people.

1.4 Economy

Germany joined the Euro Zone right at the start in 2002. The country has about 83 million inhabitants, of which about 14 are foreigners, including EU citizens and a total of about 21.2 million citizens have a migration background. This is evidence for more and more a multi - cultural population.

- GDP

The GDP is about 3.43 billion EUR, by figures for the year 2019. By that Germany remains one of the leading 5 economies worldwide. The focus is on services with 69.3 % and manufacturing with about 25% contribution to the GDP. The number of persons generating an income was 55 million. The unemployment rate was 4.9 % in 2019.

- Imports

In the year 2019, Germany imported goods to the value of 1,104 billion EUR, major imports are vehicles and spare parts, chemicals, food products, and oil and gas.

The first 5 major countries for imports of goods to Germany are Netherlands China, France, USA, Italy

- Exports

Exports from Germany were valued at a total of 1.328 billion EUR. Exported products were vehicles and parts, machinery, chemicals, followed by metallic products and food products.

The first 5 export destinations also in 2019 were France, USA, UK, the Netherlands and China.

While Germany is a huge economy and clearly a leading exporting nation, the public sector is heavily indebted. Reduction of public expenditure is a main topic and over the last years the federal cabinet achieved that the budget was without obtaining considerable new credits. However due to COVID 19 pandemic this situation has changed for the time being.

An ongoing matter for the economy is the fact that Germany is largely an aging society. This causes a lot of specific obligations for the economy and the services to be rendered. The socio-economic challenges are therefore different to these in Arab countries with a largely young population.

1.5 A Part of the EU

The EU is the result of a long-term process of re-structuring Western European co-operation between the numerous nations in Europe after World War II.

Started as a joint initiative to foster and protect the coal and steel industry by France, Belgium, the Netherlands, Luxembourg, Italy and Germany in 1951, it later developed into the European Economic Community (EEC). The EEC turned into the EU in

November 1993, consisting of 15 member states¹. On May 1, 2004, another 10 countries joined.² By January 1, 2007 another two countries joined³, which brought the total member states to be 27 countries.

As of 01.01.2020 the United Kingdom has left the EU as a member, based on a referendum held in the UK in 2016. By the end of a transition period the UK and the EU entered into a Trade Agreement by end of 2020 to regulate the special relation between them as of 2021.

The EU is an economic and political union of states, which are getting closer and closer by time. Important visible issues in that respect are the so-called Schengen Treaty, stating that EU member countries, at least some of them, have a joint external border control and internal borders are fading away⁴. That also includes a common market, a customs union and for most of the EU member states the common currency EURO, already in force since 1998 as a book currency, and available as the cash currency since 01.01.2002, which, has replaced the national currencies of most member states⁵.

On the political side, a lot of competence fields have been transferred from national to EU level, although the national governments still have the main control by having their members in the EU Council of Ministers. That Council is the highest body of the EU and has legislative function. It composes of the subject related cabinet members of the member states. Next to that there is the European Parliament, directly elected by EU citizens, also with legislative function. It also controls the appointment of the members of the European Commission, the executive power within the EU.

The matters of competence of the EU to pass legislative acts are enlisted in the Treaty of the Functioning of the EU (TFEU). That means the EU itself may not define new areas of competence but may only act within the competencies granted to it by the members states by way of treaties concluded. The TFEU differentiates between exclusive competence, shared competence, and matters in which the EU has a supporting competence.

Matters of exclusive competence are the customs union, competition and monopoly rules, monetary policy (for the Euro area), fisheries, common commercial policy, and some international agreements.

Matters of competence shared between the EU and its members states are e.g. common market, environment, consumer protection, transport, energy, judicial cooperation, protection of individual rights.

¹ The 15 EU member states are (with year of joining EU or its predecessors): Belgium (1952), Denmark (1973), F. R. Germany (1952), Greece (1981), Spain (1986), France (1952), Ireland (1973), Italy (1952), Luxembourg (1952), the Netherlands (1952), Austria (1995), Portugal (1986), Finland (1995), Sweden (1995), United Kingdom (1973).

² The 10 new member states are the Baltic states Estonia, Latvia, Lithuania, the eastern European countries Poland, Czech Republic, Slovakia, Hungary, Slovenia, and the Mediterranean countries Malta and Cyprus.

³ The two countries were Bulgaria and Rumania.

⁴ Member states of the Schengen Treaty are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Island, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden, Switzerland- as a non EU member - has joined the Schengen Treaty in December 2008.

⁵ Countries of the Euro Zone are: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain.

A competence supporting the member states in coordination of policies in e.g. the following areas exists industry, culture, education, tourism.

Lastly the EU has a special competence for a common foreign and security policy. This is organized by the High Representative of the Union for Foreign and Security Policy. In such matters legally the EU is represented by that institution jointly with the President of the European Council, which consists of the heads of state or governments of the EU member countries.

The EU understands itself as a conglomerate of states with a common cultural background. Economically, it plays a balancing role with respect to the US economy in the west and the Japanese and Chinese economies in the east.

The world economic crisis in 2008 has led to a weakness of the Euro against the US Dollar, after an initial strength. Some countries that had joined the Euro zone faced difficulties but were supported by other countries to maintain their economic stability. The overall political aim is not to let individual member states down in order to protect the Euro zone as a whole and its member states and by that to prevent a bigger economic crisis,

The political target in all policies is a solidaric approach between the member states, which objectively is not easy to be achieved but it is the aim which ideally influences the policies of the EU member states.

From its own point of view, the EU should have relations with its direct neighbours, which are the countries south and east of the Mediterranean Sea. The European–Mediterranean Partnership, the so-called 'Barcelona Process', strives to realise this, which was intended to be re-enforced in July 2008 as the Union for the Mediterranean. Also, south on the Arabian Peninsula, relations are further to be established, which relate to close cultural bonds and last but not least to the fact that the world's biggest currently known crude oil reserves are located there. In addition, the GCC countries have emerged as strategic partners in politics and as investors.

There are currently association agreements between the EU and the following Arab countries: Morocco, Algeria, Tunisia, Egypt, Palestine, Lebanon and Jordan. These agreements among other matters regulate the custom duties and their exemptions for certain goods originating from such countries once exported into the EU.

2. Germany and the Arab World

2.1 History

There are old historical bonds between Germany and the Arab World. The first official relation is said to be established between Charles the Great and Khalif Haroun Al-Rashid in the year 798. It was a special relation based on mutual respect after both had gone to war against each other in Spain.

Another example in history is Frederic II of the empire of Staufen, who resided in Palermo and was the emperor of the Holy Roman Empire of German Nation. He on the one hand had fought as crusader and on the other hand mastered the Arabic language. At his royal court, he maintained a large number of Arab scientists and thus established a considerable cultural exchange. The most important historical link, however, is the old trade relation between the Arab world and northern Europe. Arab businessmen used to travel to northern European regions to sell their goods, among others spices and essences. Traces of that relation can still be found in the German language in the shape of numerous words of Arab origin. As an additional piece of evidence, coins from the Middle East were found in Germany in the mediaeval ages.

In more recent history, the German emperor Wilhelm II visited Palestine in 1898, where he was well received. On the same journey he visited Beirut and Damascus. Germans participated in railway construction at that time relating to the Baghdad and the Hejaz railways. The German Empire, established as such in 1871 only, was a close ally to the Ottoman Empire, which explains the infrastructure related activities. In the same time Germany did not have a direct colonial interest in the Arab world, which stems from the fact that Germany started with colonial ambitions anyhow late, in comparison to classical colonial powers. In fact, the Middle East policy of the German Empire was driven by Germany's competition with the European major powers, Britain and France.

After World War II, when Germany was divided, both German states established their own relations again in the Arab World. The Eastern German Democratic Republic did so independently of the Western German Federal Republic of Germany. The latter's diplomatic relations declined shortly in 1956, when West Germany officially established diplomatic relations with Israel. Diplomatic relations to the Arab World were re-established in 1962, however.

2.2 Political Relations

The political relations between Germany and the Arab World are developing positively. Germany considers its foreign policy as part of the EU foreign policy. However, it underlines its special historical relations to Israel. This, however, is also regarded as an obligation towards Palestine and the Palestinians, and as a result, Germany is one of the main donors in terms of aid to Palestine.

Germany has benefited to a certain extent from the circumstance that it could rely on close ties to all Arab countries during the times of the cold war due to the fact that former Eastern Germany was integrated into the unified Germany. Special old bonds between Eastern Germany and certain Arab countries continued.

In the framework of these circumstances, which essentially are (i) the absence of colonial history and responsibility (ii) a special relation to Israel (iii) no direct geographical link to the Mediterranean Sea, Germany is interested in close relation to the Arab countries. Germany in addition is increasingly aware of its role as a leading economic power within the EU and the responsibilities resulting therefrom.

2.3 Bilateral Agreements

One has to differentiate between agreements on a multi-national level and real bilateral agreements only. As Germany is part of the EU and because agreements made by the EU are binding for Germany, they should be mentioned first and foremost.

The EU has divided its Near and Middle East Policy into several geographical fractions. These are the GCC, Iran, Iraq, Yemen and the Mediterranean region.

Traditionally, countries in North Africa (Maghreb) enjoy preferential treatment in relation to the EU, but also other countries, which are subject of the so-called Barcelona Process, like Egypt, Israel, the Palestinian Autonomous Regions and Jordan. This process was initiated by the EU in conjunction with 12 states surrounding the Mediterranean in Barcelona in November 1995 and is now officially called the EU Mediterranean Partnership, also called Union for the Mediterranean. It aims at intensifying the relations of the EU with its direct neighbours to the south such as Morocco, Algeria, Tunisia (Maghreb), Libya, Egypt, Israel, the Palestinian Authority, Jordan, Lebanon, Syria (Mashrek) and Turkey. In addition, other European countries situated at the Mediterranean, but not members of the EU are participating.

The Barcelona Process covered the following areas of objectives:

- political and security partnership,
- economic and financial partnership (creation of a free trade zone),
- social, cultural and human partnership.

The political motivation for that partnership had various reasons. There are old economic relations between Maghreb and the EU member states, going back to French colonialism, which result in a close economical and cultural cooperation. The aspect of migration of labor also has to be dealt with in that regard.

The countries of the Levant most obviously have to deal with the results of colonialism, in particular by Britain and France. The Barcelona Process places special focus on such countries in the quest for peace in the region. This was clearly evident at the time of implementation, when the Arab/Palestinian–Israeli conflict saw movement in the middle of the 1990s under the Oslo Process.

Maghreb states have agreements with EU predecessors, likewise Turkey and Israel long before the Barcelona Process was initiated. Therefore, the EU Mediterranean Partnership was mainly established to support the peace efforts between Palestine and Israel in a wider framework and to stabilise neighbouring countries like Jordan and Egypt.

In view of little progress made in the peace process and in view of increased necessity to really look into common interest relating to the Mediterranean Sea the Union for the Mediterranean was established. It has focus on the following aspects⁶:

- the de-pollution of the Mediterranean Sea, including coastal and protected marine areas;
- the establishment of maritime and land highways that connect ports and improve rail connections so as to facilitate movement of people and goods;
- a joint civil protection program on prevention, preparation and response to natural and man-made disasters;
- a Mediterranean solar energy plan that explores opportunities for developing alternative energy sources in the region;
- a Euro-Mediterranean University, inaugurated in Slovenia in June 2008;
- the Mediterranean Business Development Initiative, which supports small businesses operating in the region by first assessing their needs and then providing technical assistance and access to finance.

The EU has entered into association agreements with Algeria, Tunisia, Israel, Morocco and the Palestinian Authority as well as with Jordan, Lebanon and Egypt. The less detailed form is the cooperation agreement, which exists with Syria. Relations with Libya are developing..

Since the year 2004 the management of these relations are at the European side embedded into the European Neighbourhood Policy which aims to strengthen relations between EU and its neighbouring countries in the south, i.e. the Mediterranean and in the East, i.e. Eastern European countries. In principle, association agreements with the EU cover the following issues⁷:

- political dialogue;
- human rights/democracy;
- WTO-compatible free trade agreements over transition periods of up to 12 years;
- provisions relating to intellectual property, services, public procurement, competition rules, state aid and monopolies;
- economic cooperation;
- cooperation relating to social affairs and migration (including re-admission of illegal immigrants);
- cultural cooperation.

The basis for the co-operation between the EU and the GCC is the Cooperation Agreement between the European Economic Community and the members of the

⁶ [https://eeas.europa.eu/headquarters/headquarters-homepage_en/329/Union%20for%20the%20Mediterranean%20\(UfM\)](https://eeas.europa.eu/headquarters/headquarters-homepage_en/329/Union%20for%20the%20Mediterranean%20(UfM)) (accessed on 27.12.2020)

⁷ Status of individual countries may be seen through this link:
http://www.eeas.europa.eu/euromed/barcelona_en.htm

Cooperation Council of the Arab Gulf States dated June 15, 1988⁸. This agreement establishes co-operations in various fields of activity as per Art. 1 lit (b), such as

- economy and trade, details in Art. 2, 3 and 11;
- agriculture and fishery, details in Art. 4;
- industry, regulated by Art. 5;
- energy, covered by Art. 6;
- science and technology, details in Art. 8;
- investment and environment, details covered by Art. 7 and 9.

Other potential areas of cooperation have not been ruled out, i.e. the cooperation is potentially extendable beyond the areas mentioned above.

The agreement is administered on a ministerial level by a Joint Council pursuant to Art. 12–15 of the Cooperation Agreement. Numerous meetings have taken place since the Agreement came into force.

The GCC maintains a Representative Office in Brussels at the seat of the EU and likewise the EU maintains a delegation office in Riyadh, as the seat of the GCC Secretary General since 2004. In addition, the EU has opened a delegation office in the UAE in 2013.

The competent authority behind the EU delegations is the European External Action Service (EEAS)⁹.

The scope of activities ranges from political dialogue to trade and investment relations and the negotiation of a Free Trade Agreement. Such FTA has been discussed since 1990, was put on hold in 2008 and might be re-activated in light of changing circumstances.

Current projects in cooperation are the EU-GCC Clean Energy Network, focussing on energy cooperation in decarbonized energy sources and the EU-GCC INCONET, focussing on scientific cooperation.

On the mere bilateral level, Germany has entered into investment protection and encouragement agreements with all Arab countries, except Iraq so far. There are also some treaties on the avoidance of double taxation, which are very important, if someone has an investment in another state. Such treaties exist with Morocco, Algeria, Tunisia Egypt, Syria, Kuwait and the UAE. They are important to verify which state has the right to impose tax on transactions by a person of one state in the other contracting state. The aim is to create transparency for tax planning and cooperation between tax authorities between the contracting states.

⁸ The Cooperation Agreement came into force on January 1, 1990.

⁹ https://eeas.europa.eu/headquarters/headquarters-homepage/1724/saudi-arabia-and-eu_en (accessed on 27.12.2020)

3. Entering the Market

There are several ways to enter the German and European markets initially. The important matter is how to establish initial contacts with potential German customers. Visiting trade fairs or even better being present with own products at trade fairs is a very – if not the most important - tool.

In terms of rendering services and project related work the participation in networking events, such as organized by Ghorfa are important. In that regard the annual subject related conferences are to be mentioned, such as Business Forum, Health, Education and Energy Forums as well

3.1 The Business Visa

To obtain a visa, it should be noted that Germany is part of the Schengen Treaty.¹⁰ The Schengen Treaty is not a part of the EU network, although most of the countries are EU members. Obtaining a Schengen visa from one of such countries allows entering other member states of the Schengen Treaty without additional visas. There are more or less no border controls between such countries. As a general rule, such a visa is valid for 90 days upon entering the territory. The following items are required for visa application:

- Recent passport photograph;
- Passport or official, internationally recognised travel document;
- Proof of the journey's purpose (business, family visit, tourism)
- Proof of sufficient funds;
- Evidence of current occupation;
- Proof of existing health insurance coverage for the journey;
- Evidence of travel arrangements.

The traveller should notice that he/she should enter the territory of the Schengen Treaty member states at a port of entry that is within the country in which he/she obtained the visa. That is to say, getting the visa from e.g. a French Embassy and entering the Schengen countries via Frankfurt is possible but is a violation of the the rules, which may lead to a rejection of entry, the cancellation of the visa and a blacklisting for some time.

Schengen visas are usually good for multiple entries. There are three categories of duration. Visa Type C is for short stays, i.e. the tourist or business traveller. However, the important matter in the end is the rule that the accumulative stay should not exceed 90 days within a 180 day period. This is irrespective of the duration of the visa. The Schengen visa does neither grant a work permit nor a permanent residency.

3.2 The Investor Visa

A non - EU citizen, currently residing outside Germany, may obtain residency rights in Germany under the condition that he invests in Germany into a business he establishes and runs such as managing director. Condition for such residency is, that the business he would like to establish

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- Is in the economic and regional interest of Germany or the particular state or city,
- Potentially contributes to the economy,
- The finance for the business is secured by own capital or credit grants

Authorities will check – in their lawful discretion - the business concept on the basis that

- The business idea is sound
- The investor has entrepreneurial experience
- The amount of capital investment (a minimum of € 250,000 is deemed to be the least)
- The impact of the investment onto job creation and vocational training (5 jobs appear to be the required minimum)
- The impact of the investment in the field of Research & Development

Applications for such visa need to be submitted initially at the German Embassy abroad which then will forward the matter to the municipality where such investment is located. A careful preparation is important.

Once approved a Schengen Visa type D will be issued. Investors should be aware that such investors visa will grant a residence permit initially for 3 years. The person is considered then to be resident in Germany, which triggers taxability under German tax regulations.

3.3 Business Contacts

As mentioned above, business contacts may be established through active participation in or visits of trade fairs in the Middle East, and more importantly for the Arab exporter, in Germany.

Ghorfa Arab - German Chamber of Commerce and Industry in Berlin as well the German - Arab Chambers of Commerce in the Middle East can support the Arab businessman in establishing contacts¹¹. Relating to trade fairs in Germany, Ghorfa offers participation in such trade fairs and the German Arab Chambers in the Middle East offer package deals to travel to certain trade fairs, which include organisation of the trip and issue of the visa.

Famous German trade fairs are, among others:

- ANUGA, for food and food processing, Cologne
- FruitLogistica, Berlin for agricultural products
- IGW, International Green Week, Berlin, for food products
- ITB, International Tourism Trade Fair, Berlin
- BAUMA, Trade fair for Construction Machinery, Munich
- CEBIT, International Computer Trade Fair, Hanover
- Hanover Industrial Trade Fair, called HANNOVER MESSE:

¹⁰ For the member states of the Schengen Treaty, see footnote No 4

¹¹ For their addresses, see below in chapter 12 – Useful Addresses

4. Import Regulations

The import of products is regulated by the laws of the European Union as well as federal German laws.

4.1 Foreign Trade Law (AWG)

The Foreign Trade Law (*Aussenwirtschaftsgesetz*) and its executive regulations (*Aussenwirtschaftsverordnung*) provide the basic import and export restrictions. Attached to such laws is an import list with particular restrictions on certain products or requirements, if the consignment originates from a certain country.

Basically, the import of products is de-regulated. Any person residing in Germany may import any product without special license or permit.

The only requirement is an ordinary trade license (*Gewerbeschein*) to be obtained from the municipality in charge, if the import is made on a commercial basis and that the importer has a European customs number, the so-called Economic Operators Registration and Identification (EORI), to be obtained free of charge for any commercial participant under customs laws. There are some restrictions on products to be imported and their country of origin. In general, any product, which would be against public order or in violation of applicable laws, may not be imported.

These would be e.g. pirate products, which violate intellectual property rights. It might be difficult to enter the German and European markets with products that do not comply with:

- quality standards defined on EU basis,
- quantitative restrictions imposed by the EU or
- marketing requirements, like packaging and information requirements.

There are a few product groups where certain quantity restrictions are imposed, which are e.g. textile products.

In other fields, certain quality standards have to be observed. This may concern fruits, vegetables and other manufactured products.

Lastly, information and packaging requirements. Eggs, for example, have to show the type and place of production. Other products need to list the detailed ingredients etc.

In each case of export to the EU market, the foreign exporter should - in conjunction with the corresponding importer – obtain information about applicable regulations in that regard. General information also in English language may be obtained from the website of German customs¹².

4.2 Customs Law

Customs duties are imposed on all products unless these are exempt from customs. Due to free trade agreements, products from certain countries may be imported with

¹² https://www.zoll.de/EN/Businesses/Movement-of-goods/movement-of-goods_node.html (accessed on 27.12.2020)

or without reduced custom duties. The countries of the Barcelona Process, the EU-Mediterranean Partnership countries, principally have certain customs duty advantages. Such advantages can be the total exemption from customs duties or reduced customs duties, if the consignment really originates from that country and has not only been traded through that particular country. In order to check that out, i.e. to prevent any abuse, certificates of origin are frequently required as documentation accompanying the imported goods. In certain situations, a diagonal cumulation is possible. Details are regulated in the Regional Convention of the Pan Euro Mediterranean preferential rules of origin (PEM Convention)

On some products, there is an import tax of 19%, equal to the Value Added Tax. Also, certain products are subject to consumption tax, like tobacco, liquor, beer, champagne, coffee and crude oil and its derivatives.

There are certain products that can hardly be imported or traded inside the EU. These are rare and consequently protected animals and plants.

Customs inspection and clearance may happen at the port of entry into EU territory, i.e. the sea or airport or, in case of road transportation, at the border crossing into EU territory. This last alternative is rare. In case of transport by truck, customs clearance may take place at the final place of destination if the entire consignment is intended for one destination. The truck then travels bonded, i.e. sealed, through EU territory until it reaches its final destination, where the customs clearance takes place prior to unloading.

There is also the possibility to store imported goods prior to customs duty inspection at bonded warehouses or free port areas at seaports and airport cargo sections. This might be necessary to also make products fit for their customs clearance, like appropriate packaging and labelling prior to entering the market.

4.3 Customs Tariffs

Customs tariffs are assessed by the goods list of the EU, called TARIC, (Tarif Intégré des Communautés Européennes), which is the Integrated Customs Tariff based on the Harmonised System for the Designation and Coding for International Trade as also used to a certain extent in Arab countries.¹³ The application of that coding system is important for the easy identification of products and their assessment relating to customs.

The customs procedure is that imported products have to be declared on a particular form along with certificates of origin, as far as required, in order to clarify whether a product qualifies for exemption from customs duties or reduction. In that context, the rules of origin have to be observed, which are again different if a country enjoys preferential status based on an association agreement or not. Details can be checked in the Internet, in this respect refer to the previous footnote. Lastly, the commercial invoice also has to be attached.

¹³ The particular code can be checked in the Internet at .
http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

5. Distribution Channels

The distribution of imported products in Germany may be done by the importers themselves. This is the case if an importer has purchased some consignments from a foreign exporter and sells the goods on his own, through own distribution channels.

Agents and distributors can be appointed on either exclusive or non-exclusive basis. Producers and traders and/or marketing organisations are qualified as principals to the agent.

If the foreign exporter would like to have influence on the distribution inside the EU or Germany, he may consider appointing a distributor, commercial agent or a broker or he may also establish his own distribution network in the targeted market, as there are no restrictions on the commercial activity of import and trade for foreigners.

5.1 Commercial Agency

The commercial agency is regulated in the German Commercial Code.¹⁴ The law differentiates between agent and distributor. The classical way as traditionally regulated is the commercial agent. He mediates contracts between the producer and the customers against a commission. Condition is usually a contract of agency, which is similar to an employment. Therefore, the commercial agency law originates from model that the commercial agent is an individual having a commercial agency contract with a producer. The traditional approach was that local producers would appoint commercial agents throughout the – domestic – market, who would travel to customers, market the products and mediate contracts on behalf of the principal.

The remarkable fact is that such a trader is treated as an employee if he is more or less integrated into the producer's organisation. That is to say if he is not able to plan his own work times, if he is obliged to follow instructions in terms of whom to approach, which appointment he has to follow etc. In that case, the thus employed product representative does not have a right to claim for compensation upon dismissal.

Therefore, the real commercial agent is an independent businessman working on his own. For his successful mediation of contracts, he earns a commission to be agreed upon with his principal. That is justified in light of the fact that he is bearing a lot of risk as an independent businessman.

His right to a commission arises if he has contributed to the successful conclusion of a contract. That is to say that he must have participated considerably in the contract conclusion and must originally have arranged the contact between producer and customer. The claim for commission is therefore maintained for all business transactions between producer and customer if the commercial agent originally introduced the customer to the producer or vice versa.

A commercial agent who has been granted a certain geographical territory or certain types of customers, has a claim for commission on all business generated in that territory, even if exclusivity had not been granted.

¹⁴ §§ 84 – 92 lit c HGB (German Commercial Code)

The commission is earned once a contract has been concluded. However, the claim becomes due by law once the represented party has done its work as stipulated in the concluded contract, i.e. has made the delivery. Often agency contracts provide that the due date for payment of commission is transferred to the time the customer has paid. Any delay beyond that date is not permissible.

The calculation has to be made on a monthly basis, if not agreed upon otherwise. A deviation from such rule can be that the calculation is made at the end of the month following a three-month period. Therefore, quarter annual calculations are possible. The calculation has to show all necessary details for the parties to determine the commission. If either party does not cooperate in that regard, the other party has the right to claim disclosure of the books of the other party relating thereto and auditors may be appointed.

In principle, the contract does not require any particular form. There are no public registration requirements for commercial agency contracts. The agent's job is to mediate the conclusion of contracts between the producer and the acquired customers. Unless otherwise agreed upon in the contract of agency, he does not have the power by law to conclude or amend contracts in the name of his principal. He is also not entitled to collect sums from the customers. He is allowed however by law to receive and accept warranty claims on behalf of the principal.

The term of a commercial agency agreement can be limited or unlimited. A limited contract ends on the expiration date. In case of a factual prolongation, the contract is considered to have an unlimited term. So-called chain contracts, i.e. limited contracts that are renewed, are considered unlimited after the second renewal.

The unlimited contract can be terminated without cause observing a notice period of

- 1 month during the first year;
- 2 months during the second year;
- 3 months in the third to the fifth year, and
- 6 months thereafter.

An agreement on a shorter notice period is void. An extension of the notice period is possible, but the producer shall not enjoy a shorter notice period than the commercial agent.

Premature termination reasons can be a material breach of contract, insult, severe distrust and unlawful competition. In such cases, usually a written notification with the request for rectification should be issued prior to an actual premature termination.

The agreement terminates as well once the commercial agent - if an individual - passes away or - in case of legal entities - has been de-registered from the commercial register. The agreement also terminates upon the unanimous decision of the contractual parties.

The commercial agent has the right to claim compensation upon termination.

Condition for this claim is that:

- the producer still makes use of the business relations introduced by the agent after the contract termination; or
- the agent would lose claims for commission, which he would earn would the contract not have been terminated; or
- the payment of compensation would be a matter of equity or customary practice.

The claim is excluded if

- the commercial agent has terminated the contract of agency, except if the producer has given reason for termination or if the commercial agent – as an individual – cannot continue his work due to age or state of health;
- the contract was terminated for cause as a result of wrongful doing on behalf of the agent, i.e. breach of contract.

The compensation is also excluded if the agent agrees with his principal on the transfer of the agency to another agent. Such an agreed transfer cannot be concluded prior to the expiration of the contract, respectively if the agent agrees to that. The law assumes that the new agent will compensate the former agent.

The calculated compensation may not exceed the average commission paid during one year or the other payments made to him on average in the last 5 years. A German court will rarely grant a full year's commission.

The claim for compensation upon termination cannot be excluded by contract. It is important that after the elapse of one year after termination the claims of the terminated agent will become statute barred.

Contracts can be made under applicable German law and jurisdiction of ordinary competent German courts. However, the parties may deviate therefrom and apply other laws. But as mentioned above, some characteristics are mandatory. Other courts or arbitration may be chosen, but care should be taken relating to the acknowledgement and enforcement of foreign arbitral awards or judgements in Germany. The mandatory provisions are then treated as rules of public order. For further details, see chapter 10.4 herein.

5.2 Brokers

Besides the commercial agents, there are commercial brokers. These are independent traders who actually mediate contracts between two parties. However, they do not do this on the basis of an overall representation agreement with a principal. They are not anyone's agent, but try to bring businesspeople together and earn their commission on a mere case by case basis. They are also not obliged to either party as representatives.

5.3 Commission Agents

Commission Agents are traders who sell products in their own name, but internally act for account of their principal. Therefore, only the commission agent appears as the

seller towards the customer, while internally the commission agent has not yet purchased the consignment from the producer at the moment, he concludes the sales contract with a customer.

5.4 Distributors

Next to the commercial agent, the other most important form of distribution is the distributor who acts as an independent trader. He relieves the producer from a lot of administration, as he purchases and imports the products and pays the purchase price to the producer. He in turn markets and sells the products in his own name, as distributor of the principal with his own sales prices.

The distributor is not covered by particular provisions of the law. Therefore, the provisions relating to the commercial agency apply in legal practise. There is considerable freedom in the preparation of the respective contracts.

Contracts can have limited as well as unlimited terms. In case of unlimited contracts, German courts tend to prolong the notice period for terminations. That is the case if the distributor is required to make a lot of investments and if he is closely tied to the producer.

Contracts may be terminated for cause, among others breaches of contract, which includes considerable delay in payments to the principal.

Upon termination, the distributor is entitled to compensation like the commercial agent. Condition is that the distributor is closely linked to the marketing organisation of the producer, follows up matters for the principal and is obliged to disclose names of customers to the producer.

By law the mandatory compensation may be contractually excluded, if the distributor has his territory outside the EU. That is to say a German manufacturer appoints a distributor e.g. in an Arab country under application of German law, compensation upon termination maybe excluded.

5.5 Setting up an own Distribution Entity

An alternative to appointing agents or distributors is to establish an own sales and marketing organisation in Germany. This is due to the fact that any person/legal entity may act in the field of import, wholesale and retail trading. There are no restrictions on foreign capital involved; no particular foreign investment licenses are required. Details are given below in section 6 on Foreign Investments.

6. Foreign Investment in Germany

Germany is keen to attract foreign investors. Therefore, it follows an open door policy and maintains a liberal investment climate. There are no specific foreign investment licenses. Establishing a company by foreigners is possible with 100% foreign ownership. Authorities need to be notified on an annual basis on foreign shareholdings, if they exceed 10% of the shares.

Next to establishing new companies, foreign investors may buy companies in Germany already existing. If non-EU foreigners wish to acquire shares in existing entities running critical infrastructure or industries, which are declared by law of a strategic interest, the federal ministry of economy and energy may request detailed information and may impose obligations or restrictions. These industries are e. g. IT, military equipment and certain medical products.

6.1 Objectives

Foreign direct investments may be required to establish an own distribution network in terms of a trading company. It could make sense as well to buy goods or equipment for own facilities in the investor's home market. This often is feasible in order to be closer to possible suppliers for the home market and to avoid export difficulties for the suppliers, as a simple sales business would be a domestic transaction while the export into his own home country has to be borne by the supplier himself.

Industrial production is also possible, e.g. to avoid customs duties or if you would like to be closer to customers or make use of certain skilled labor not available in your home country or lastly if the foreign investor wishes to acquire certain technology connected with a company in Germany already existing. Only in case of critical infrastructure and certain industries, a permission needs to be obtained by the federal ministry of economy and energy.

Services can be provided along with facilities for research and development. Another objective can be to hold certain investments, whether that is real estate or shares in other companies.

6.1.1 Trading

Trading in the sense of import and export, whole or resale trade is permitted. A trading license is required, which has to be obtained from the municipality in charge at the place where the company is to have its office.

The legal entity to be established has to be registered with the district court in charge of the region where the entity is to have its registered seat of incorporation.

6.1.2 Industrial Production

Industrial production is possible in any legal form provided by German company law. A trade license and registration at the district court are also required here. In this case, obviously care should be taken with respect to the location of the facility, the availability of labor and infrastructure relating to the transport of the goods produced and the availability of supplies. In case the production is likely to be labor-intensive, there are certain areas where the investor could apply for subsidies by the concerned state for supporting the creation of job opportunities. A production facility may market its own products and in addition may also trade in other products or components. It would be possible therefore to establish an entity, which imports certain products for the purpose of their distribution in Germany and in addition to produce products locally. Care should be taken on the suitability of the land to obtain building permits and relating to the products the required operational licenses to be obtained.

6.1.3 Services

Depending on what services are to be offered, they can be connected to the above-mentioned facilities or retained as an own entity. Registration requirements are the same as above. Services could be contracting, after sales service, management, consulting or whatever could be summarised under this title. Free professions however require licensing through their professional associations in Germany. Their legal types of entities however are not necessarily limited to professional partnerships but may be registered as limited liability companies or in some cases as joint stock companies.

6.1.4 R & D

For research and development facilities, certain subsidies can be applied for in the sense of creating jobs with the highest qualifications. R & D may be combined with industrial production facilities. Care should be taken on the availability of qualified labor.

6.2 Legal Forms and Requirements

German company and commercial law offer a variety of legal set-ups for the foreign investor.

One may establish a representative office or a branch. One may establish true independent companies as well. These are different kinds of partnerships, with - in general - unlimited liability of their partners. These partnerships are

- General Partnership
- Limited Partnership
- Silent Partnership

Additionally, if the entrepreneur establishes everything in his own name without a further legal set-up with partners, he would maintain a sole proprietorship.

Then there are the companies limited by shares, which appears to be a more favourite tool for a foreign investor as the liability of the investor as a shareholder is generally limited. These companies are:

- Limited Liability Companies
- Joint Stock Corporations
- Partnership Limited By Shares

Below some features of the different types of companies are outlined.

6.2.1 Branch Office

The branch office is a dependent part of the foreign mother company. However, it has its own management and bookkeeping. Its registration at the local court in charge is required. The registration is not too straight-forward, due to the fact that the court of registration has to look into the corporate structure of the foreign mother company. The liability of the branch is not limited to its operations in Germany, but the foreign mother is fully liable for it.

With respect to taxes, the income has to be fully declared as German tax law considers such branch offices as permanent establishments. Therefore, tax declarations also must be filed in Germany even with the availability of treaties for the avoidance of double taxation.

A simple representative office in Germany of a foreign company in order to evaluate the market potential but not engage in business activities can be recognised as not being a permanent establishment and therefore as not subject to taxation in Germany. Such a representative office, however, cannot generate income and therefore must be seen as a mere cost center instead of a profit center.

6.2.2 LLC (German: GmbH)

The limited liability company, governed by a separate law, is the most common tool for foreign investors to establish a company in Germany. It is transparent, easy to handle and in principle cost and risk-effective, as its liability is limited. It may have one or more shareholders, either individuals or corporate entities.

6.2.2.1 Foundation/Articles of Association

The LLC requires a capital of € 25,000.00 as minimum share capital. Shares can be of different nominal value (as to the discretion of the shareholders). The minimum share capital has to be paid in after the notarial deeds have been issued and prior

to the company being formally registered. Contributions in kind are possible, if the articles of association provide so. Typically, these are tangible or intangible assets, their economic value can clearly be ascertained. As mentioned before the LLC can be established by one or several shareholders. The foundation is simple. The LLC requires articles of association determining the rights and obligations among the partners, the objects of the company, the capital and the management and the registered office, i.e. the address of the company's place of business. Such articles of association must be signed by the shareholders in front of a notary public, who then registers the company at the local court after having obtained the approval of all partners. The shareholders also have to pass a shareholder's resolution on the appointment of the management.

6.2.2.2 Management

The LCC can be managed by a single Managing Director (*Geschäftsführer*) or a Board of Managers. In principle several members of the board of managers represent the company towards third parties jointly. Single representation rights may be granted. All persons constituting the management have to be entered in the commercial register.

The organ, however, which may dismiss managers, is the General Meeting of the shareholders. It deals with all basic decisions, like the winding up of the company, amendments to the articles of association, approval of the annual financial statements, balance sheet, and the distribution of profits.

Everyday management can partially be entrusted to persons having power of procuration. This empowers them to represent the company within a limited scope. The power of procuration is entered in the commercial register and has to be granted by the managing director(s).

Lastly, the articles of association may also provide for the establishment of a board of advisors or supervisory board to advise and control the management on behalf of the shareholders. This makes sense in case managers are employed and investors cannot be present often but would like to have certain persons present whom they trust to look into subject matters on their behalf more frequently than they could through the annual general meeting. With such a supervisory board, the control person is then institutionalised.

6.2.2.3 Liabilities and Obligations

Shareholders are obliged to pay in their share, to pass resolutions on the approval of the annual financial reports and balance sheets and to always appoint the management according to the articles of association.

The management is competent and obliged to maintain all licenses and manage the company according to the applicable laws. To be precise, next to maintaining a successful business, it ensures that tax declarations and respective payments are made in time, social insurance contributions are paid and so forth. The management is responsible for such matters. If it fails to do so, it is subjected to fines imposed by the public authorities. Therefore, it makes sense to appoint a person as managing director who is actually able to run a company in terms of language and time. Such managers can be supervised again by a control board.

The company is obliged to issue annual financial statements, like profit and loss account and balance sheet. The preparation of such is the obligation of the company's management. The financial statements should need be filed with the assistance of tax advisors. The approval of the financial statements comes from the shareholders. Bigger sized limited liability companies also have to prepare a management report, which is an obligation smaller sized limited liability companies are exempted from.

6.2.2.4 Liquidation

A limited liability company can be wound up upon decision of the shareholders. The management of the company is further obliged to initiate the liquidation if the share capital is used up. However, there is also the possibility to have the company enter into insolvency proceedings to clear up debts by arranging a settlement with the creditors, which is supposed to prevent real bankruptcy in the end. In such cases, an insolvency application has to be made to the local district court in charge, which appoints an insolvency administrator. He takes over the management and decides in cooperation with the creditors on the best way to satisfy as many claims of the creditors, which may be employees with outstanding wages, social insurance, tax authorities and lastly trading partners, suppliers etc. Then there are two alternatives in insolvency procedures. Either there are not enough assets to continue the business, in which case the company will be liquidated by the insolvency administrator or, if there is still some potential, an insolvency plan has to be drawn up, which provides for the recovery of the company through certain measures, like divestment of certain parts of the business, opening up new business opportunities, reduction of cost, prolongation of debt due dates etc.

Managers who do not apply for insolvency in due time can be prosecuted if they do this in order to purposely delay the initiation of the proceedings.

6.2.2.5 Small LLC

The Small LLC (*Unternehmergeellschaft, haftungsbeschränkt*), is an ordinary LLC as mentioned above, however with a minimum share capital of one Euro and a maximum of 24,999 Euro.. Contributions in kind are not permissible. As a compensation to the low share capital one quarter of the annual profits shall not be distributed, but used to establish a reserve. After the capital by building up reserves has reached the amount of EUR 25,000 and transferring them into equity, the name has to be changed to an ordinary LLC.

The Small LLC had been introduced in 2008 as a response to the considerable number of British limited companies having established business seats in Germany, which was attractive due to the low share capital requirements in Britain. The Small LLC has since then gained high acceptance in Germany for new start up entrepreneurs-

6.2.3 Joint Stock Company (German AG)

The Joint Stock Company or Stock Corporation is governed by a separate law.

There are two types of stock companies: the ordinary and a smaller one. The minimum stock at the foundation of the joint stock company is EUR 50,000.00. By law, the stock company needs to have a managing board and a supervisory council, which represents the interest of the stockholders.

The managing board may consist of one or more persons. For a joint stock company with a registered share capital exceeding three million Euros, at least two members are required, unless the articles of association provide otherwise. Companies having more than 2,000 employees in any rate need at least two members, as an employee's representative has a seat in the managing board by mandatory law.

The supervisory board has certain obligations and rights

Compared to establishing an LCC, establishing a stock company is time consuming and more complicated. If it has the right market potential, a joint stock company may go public at one of the stock exchanges in Germany.

The small stock corporation requires just one founder and has stock shares of par value and non-par value. Administration is easier compared to the ordinary stock corporation. The minimum capital, however, is also EUR 50,000.00.

In addition, there exists as per European legislation the Societas Europaea (SE), the European joint stock company, which is a good tool for conglomerates of companies to establish a European holding company for its affiliates. The minimum capital is EUR 120,000.00. This form of joint stock company exists only since the end of the year 2004. It has gained since then increasing importance due to increased cross border European integration and amalgamation of companies. Under German law the SE offers a different management model as an option. SE joint stock companies may be managed by an administrative council, i.e. a board of directors consisting of managing and non-managing members. Therefore, the dualistic model, which governs the German joint stock company, separating management from the supervisory board can be replaced by that more lean structure.

6.2.4 Sole Proprietorship

A more and more rare type of company is the sole proprietorship. Basically, any person opening a business and obtaining a trading license from the municipality in charge can found an establishment or sole proprietorship. Due to the fact, however, that there are often partners and in order to minimise the risk and liability, individuals and

partners will rather establish a LLC or any other type of partnership, which at least regulates the relationship between the partners.

The sole proprietorship will not be the right vehicle for a foreign individual investor, because the investment alone does not qualify for residency and work permit in Germany. It would be very difficult for the investor to run such establishment on his own.

6.2.5 General Partnership

The general partnership consists of partners to be registered in the commercial company register as a general partnership. There must be at least two partners, who may be individuals or legal entities. The liability is unlimited and the partners are liable towards creditors jointly and severally.

6.2.6 Limited Partnership

As known in other jurisdictions as well, there is in a limited partnership (*Kommanditgesellschaft*) at least one general partner who has unlimited liability like in the general partnership and there is additionally at least one partner who is limited in his partnership just to the extent of his interest in the limited partnership. A deviation therefrom is the so called *GmbH & Co KG*, where the unlimited partner is actually a limited liability company.

6.2.7 Partnership Limited by Shares

A mixture between the limited partnership and the joint stock company is the partnership limited by shares (*KGaA*). That entity is a specific form of the joint stock company, however with an unlimited liable partner, who in turn may also be a corporate entity.

The advantage of this scenario is, that this entity may be registered at a stock exchange, i.e. its shares may be traded. However, the supervisory board is more limited in his rights in comparison to the supervisory board of a joint stock company since the unlimited partner in a partnership limited by shares is actually the managing partner and acquires more independent rights than the management board of a joint stock company. Also, the employee's management participation rights are more restricted in favor to the managing partner of the entity.

6.2.8 EU companies acting in Germany

Based on European Court of Justice decisions and EU legislation targeting to create an equal treatment for companies within the policy of freedom of movement and establishment within a single market, it is acknowledged that also corporate entities from other European countries may act in such corporate character without being required to actually register themselves in Germany. This causes that e.g. English limited liability companies may open office in Germany, in addition to their registered offices in the UK. Due to their minimal share capital requirements, such entities have been an increasing competition in

particular to German LLCs. However, using such entities shows, the limited availability of funds of the investors, which does not create much trust in the market for such entities, for the time being. Moreover, Germany has introduced the Small LLC to respond to that development, (see chapter 6.2.2.5 above). That move has been widely successful.

Annex: Registration Requirements & Procedures/Checklist for the Establishment of a LLC:

- Definition of the business object
- Choosing the right location
- Definition of the legal form one wishes to create
- Analysis of the management structure, choosing the right people to work with
- Possible partner analysis
- Tax analysis
- Feasibility check
- Foundation
 - Setting up articles of association
 - Issuing them in front of notary public in person or through a third person with the requirement for approval thereafter. For legal entities, legalised copy of articles of association, CR copy and power of attorney for the person to act on behalf of the company.
 - Opening of an office and other facilities, if required
 - Opening of a bank account, deposit of share capital
 - Registration at the local trade register
 - Application for the trade license at the municipality through appointed management
 - Application for the tax number and other file openings at the authorities in charge

6.3 Tax Considerations

There is no investment planning without considering taxation issues. It is known that taxation in Europe as a whole is a matter of concern, in particular if a foreign investor comes from a country with low taxation.

Therefore, the question has to be raised who is actually subject to taxation in Germany.

Germany has a tax system, which is based on the global income if a taxpayer is fully taxable in Germany. Fully taxable are individuals who are resident in Germany and who remain in Germany more than 180 days per year. Fully taxable are legal entities registered in Germany if they are permanent establishments.

6.3.1 Criterion of 'Permanent Establishment'

A permanent establishment is – as understood by the Foreign Tax Law of Germany and also as found in all treaties for the avoidance of double taxation (DTT) - a place of actual business and management of an entity. It goes without saying that a company, which is registered in Germany, having foreign shareholders but doing business in Germany is taxable for its income generated world-wide unless a DTT provides otherwise. However, the question may occur whether a simple representative office in Germany, being a branch of a foreign company, is still taxable for its income in Germany. This is the case if such entity would be an affiliated part of its parent company, thinking of a branch. In that case, limited taxability would apply relating to the income of the branch only. Otherwise, the German tax authorities would tend to consider the world income of the branch's parent company as taxable income due to the principle of world income taxation.

6.3.2 Trade Tax

The trade tax applies to all legal entities and any entrepreneur except the liberal professions. The trade tax is generated from the income. The trade tax is a municipal trade tax connected with the trade license. The calculation is twofold. The federal government has fixed the tax assessment rate at 3.5% of the taxable income. The calculation rate based thereon is fixed by each municipality individually. The calculation rate again is a percentage with which the taxable income subject to assessment based on the assessment rate has to be multiplied. If e.g. a corporate entity in Munich has a taxable income of EUR 100,000, 3.5% thereof are EUR 3,500. The municipality of Munich has fixed its calculation percentage with 490. This results in a trade tax of EUR 17,150.

6.3.3 Income Tax/Corporate Tax

The Income Tax is a federal tax. Income tax is imposed on individuals, sole proprietorships, general partnerships and limited partnerships, while LLCs and joint stock corporation pay corporate tax. The calculation is also made based on the operating income after deduction of the operating expense.

The current tax rates for income tax, which is a progressive tax, i.e. the higher the income the higher the tax rate, are 14% minimum and 45 % maximum. A 5.5% surcharge called "solidarity surcharge" for the re-construction of the Eastern German states has been abolished with effect as from the year 2021 for approx. 90% of the tax payers. The surcharge is calculated on the basis of the payable tax and will be charged only for tax payers whose taxable income is greater than € 61,717 p.a.

Corporate tax is assessed on a flat rate of 15% plus 5.5% solidarity surcharge for German re-unification expense, i.e. in total a corporate tax rate of 15.825%.

If profits of entities subject to corporate tax are distributed to shareholders, the shareholders are subject to a 25% withholding tax on such dividends.

German subsidiaries of foreign mother companies are subject to a 25% capital gains tax on dividends unless double taxation treaties provide otherwise.

Tax declarations have to be made on an annual basis. Tax payments are usually due in advance in quarterly instalments. Expenses are deductible. There are detailed depreciation rules and detailed rules on building up reserves for future investments. At the same time, losses are carried forward for an unlimited period of time. Therefore, even companies having suffered losses in the past may have assets, namely such tax credits in their books. The tax credit can be offset against income and corporate tax, but not against trade or value added tax. The tax credit of a company only remains effective if 50% of the shareholders do not change. This is to avoid the systematic sale of companies having incurred losses and tax credits consequently.

6.3.4 Taxation of Dividends

The partners have to pay taxes on profits distributed to them, as dividends constitute an income. Again, it depends on whether the partners are legal entities, which would be subject to corporate tax, or individuals being subject to income tax.

Persons not resident in Germany but generating an income, e.g. from dividends, are taxed on that limited income generated in Germany.

6.3.5 Turnover Tax/Value Added Tax

The so-called turnover tax, formerly called value added tax, is imposed in principle on any commercial transaction at a rate of 19% of the net value of goods or services. Some goods and services are exempt or subject to a reduced VAT rate of 7%, like certain basic foodstuffs and agricultural products. Price calculations are to be made by adding 19% on top of the net price including all expenses. Invoices have to state this amount. The collection of the VAT is done by deducting paid VAT from collected VAT. The remainder has to be paid to the tax authority as VAT.

There are exceptions to the rule relating to the taxability of VAT in certain transactions. A service rendered to a foreign entity outside the EU or goods

sold abroad are not taxable in terms of VAT. In this respect, VAT is not charged and collected for such transactions. For goods or services sold or rendered outside Germany but within the EU VAT is charged at the country of the destination of the goods or services. That means invoices do not need to contain VAT but the VAT is charged at the entity obliged for payment under an invoice. A foreign entity continuously doing business in Germany and receiving funds for those transactions is liable for VAT in Germany. As German tax authorities are not able to collect such funds from the foreign entity because it is not residing in Germany, the VAT of such transactions has to be paid by the person paying for the service or goods received. This is sort of a withholding tax, regulated in detail in the Turnover Tax Law.

6.3.6 Double Taxation Treaties with Arab Countries

There are a number of Treaties for the Avoidance of Double Taxation (DTT) concluded with Arab States. Algeria, Egypt, Kuwait, Morocco and Tunisia and the UAE have full DTTs. A DTT with Oman has been concluded in the year 2012, but it has not entered into force yet. Yemen and Saudi Arabia have DTTs limited to air traffic with Germany.

If an individual or legal entity in such a country generates an income from Germany, one has to carefully analyse, which tax law applies. In principle, such DTTs provide that if an individual of one country works in the other country, his income is taxed in that other country. With respect to entities held in one country by persons located in the other country, it depends whether the entity in the one country (here: Germany) is a permanent establishment and whether the activity pursued is considered an active activity, i.e. somehow independent from the foreign parent company.

In other words: if for example an investor from Kuwait maintains a company or branch in Germany, which just acts as a storage facility for products to be sold on behalf of the Kuwaiti company, it might turn out that Kuwaiti taxation applies rather than German taxation.

6.4 Employment of Personnel/Labor Law/Social Law

The employment of personnel is important in terms of finding suitable persons and in terms of personnel costs. Germany's social system provides that the employer has to contribute to the employee's health insurance as well as to the social insurance. The social insurance payments are made for the benefit of the national old age pension scheme, accident insurance and unemployment insurance.

6.4.1 Approximate Costs

When calculating the costs for personnel, one has to keep in mind that on top of the gross salary to be paid out, after deducting the employee's contributions, the employer has additional costs for social insurance and

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health insurance for his employees. This additional amount is roughly about 30% of the actual salary as additional expense. Therefore, employing a person with a salary of e.g. € 4,000.00 would cost the employer in total a monthly budget of € 5,100.00.

The below table shows the contributions of both the employee and the employer to social insurance, calculated as percentage from the gross salary.

Insurance Type	Employer contribution	Employee contribution	total
Health insurance	7.3 %	7.3 %	14.6%
Nursing Insurance	1.525 %	1.525 %	3.05 %
Old age pension insurance	9.3 %	9.3 %	18.6 %
Unemployment insurance	1.2%	1.2 %	2.4 %
Occupational accident insurance	1.6%		1.6 %

In consequence the contribution of the employer is on top of the gross salary, while the contribution by the employee is deducted from the gross salary and transferred by the employer to the respective insurance.

The employer also deducts the income tax payable by the employee and transfers the same to the tax authority.

Only so-called mini jobs are exempt from social insurance. These jobs are allowed in two alternatives. Firstly, with an income not exceeding € 450 per month. This causes due to the minimum hourly wage of € 9.50 a limited availability of the employee for only 47 hours per month. Secondly, either employment of not more than three months or not more than 70 days per year of employment. These mini jobs are good for seasonal work requirements or students etc.

6.4.2 Hire & Fire

Employment contracts do not require a specific form. However, employment is carefully regulated. Usually, employment is made for an unlimited duration. There are however also contracts for limited time or part time work. In case of limited time contracts, it is not allowed to continuously employ personnel on the basis of such limited time contracts. These need to have a specific reason, i. e. they must be project related or shall not exceed a total accumulated time of two years after which an unlimited employment should follow. The full daily

working time is 8 hours, unless otherwise agreed upon between a certain industrial sector representation and the corresponding trade unions.

A contract should contain the job description, the salary and the vacation. The latter is regulated by law and amounts to 20 workdays per year assuming full-time employment. It should also be noted that an employee has the right to continued payment of his salary in case of absence due to sickness for 6 weeks.

In principle, employment contracts can be terminated only for cause and with a notice period. The notice period is at least 4 weeks to the middle of a month or to its end. The duration of the notice period is extended the longer the employee is in service with the employer.

Basically, the law is very restrictive on defining the legal causes for termination. There is a special law protecting the employee against unlawful and unfair dismissal by the employer, called Dismissal Protection Act. In case of dismissal for cause attributable to the employee, usually the employer first has to inform the employee about the misconduct in writing with a time period granted to rectify the situation. The employment contract may only be terminated for cause in case of a repetition of such a violation of the same type. This is applicable notwithstanding the possibility of a termination for cause effective immediately. These cases, however, are restricted to severe violations, causing damage to the company. The courts rarely view such cases as being just and lawful.

6.4.3 Employee's Participation in Decision-Making in an Entity

Trade Unions have fought a long time to achieve a certain democratisation of the industrial environment, i.e. certain participation rights of employees in the decision-making processes of their employers.

In companies employing more than 5 employees, such employees may establish an employee's council, which has to be heard in decision-making processes relating to social, personnel and economic matters. In LLCs and joint stock companies and other form of corporations with more than 500 employees, one third of the members of the supervisory board have to be appointed from the staff. In joint stock companies with more than 2,000 employees, the employees have to be represented in the supervisory board in the same number as the stockholder representatives.

Employment conditions are often negotiated between certain industry representations and their respective counter parts in the trade unions. This depends on whether the employing company is a member of the concerned branch organisation of employers. There are certain matters like minimum salary, working hours, vacation etc., which are negotiated and agreed upon for a certain fixed time. Negotiations between those trade unions and industry organisations gives each party more weight in such negotiations. The concluded agreements, which are binding for the members, give each party some security in cost planning.

6.4.4 Employment of Foreign Personnel, Residence and Work Permits

Usually non EU personnel cannot be easily employed. Germany follows the policy that there are enough persons on the German job market. However already with the Immigration Act of 2004 the government has introduced easier access to residence permits for qualified foreign personnel, a policy which is followed since then by the German government. This has been emphasised by the revised law in 2020, whereby certain qualified personnel is invited to work in Germany under an immigration policy.

Based on that qualified personnel may apply for an immigration visa, once it has a certified qualification, masters the German language evidenced by a language diploma level B1 and is able to maintain its residence during the time of seeking for a job. In that case the visa will have a duration of 6 months. A residence visa and work permit is then issued, once an employment contract for full time employment has been concluded.

Qualification in that context means a completed vocational training or an academic grade, obtained, which can be certified as equivalent to a German corresponding certificate.

Non - EU students, who have finalized their studies in Germany may also stay in Germany for job seeking purposes for a maximum of 18 months.

A person who has worked under a residence and work permit for 5 years, may apply for an unlimited residence permit to be followed potentially later by obtaining the citizenship against giving up the former nationality.

It is important, however, to clarify that the mere investment in Germany does not guarantee the issuance of a work permit. For the investors visa, please see chapter 3.2.

6.5 Financing Programs/Subsidies/Incentives

Germany is keen to attract foreign investors. Therefore, it offers incentives within the limited possibilities of a WTO member state and member of the EU, which however vary from state to state within Germany, as a good part of the competence for granting incentives lies with the federal states and not with the federal government or legislator.

6.5.1 What is Subsidised?

Subsidised are principally investment projects, which

- are establishments of new operational facilities in production or services create new job opportunities,
- are the extension of existing operating facilities,
- the modernisation /rationalisation of a facility,
- the takeover of and investment in insolvent companies in a business and labor-friendly manner,
- the relocation of an existing facility.

6.5.2 Who Offers Incentives?

Incentives are granted by facilities from the European Union, the federal government and its agencies as well as by the German federal states.

The best way to approach the study of grants is to contact the investment promotion agency of the particular state where an investment is to be located. Initial information can be obtained on the website www.invest-in-germany.de as well as www.foerderdatenbank.de. The different websites of the 16 states also offer certain information and links. The links of the 16 states are listed in section 11 of this guide.

Information can also be obtained from commercial banks and the German Federal Bank for Reconstruction, KfW, www.kfw.de.

6.5.3 Types of Subsidies

The subsidies and incentives can be divided in principle into subsidies and grants reducing

- operating costs or
- capital costs.

Reduction of operating costs takes place by means of:

- labor costs grants, whereby the public subsidising organisation takes over parts of the labor costs for employees for a limited period of time;
- grants for the creation of new jobs for certain persons, like young or long time unemployed persons etc.;
- grants for qualification measures either performed by public bodies free of charge or by contribution to the actual cost of the employer.
- Research grants

Reduction of capital costs works by grants in terms of

- financial aid;
- long-term soft loans;
- capital participation as a silent partner or a registered shareholder for a start-up phase;
- tax releases, which are provided for in federal as well as state laws to a limited extent.

All such grants are provided through the public bodies of a state, their investment promotion agencies and state-owned banks like the KfW. It is important to discuss such grants at the earliest possible stage, i.e. prior to actually initiating a project, otherwise certain grants cannot be applied for if the particular project has already commenced.

6.6 Acquisition of Real Estate in Germany

The acquisition of real estate is unrestricted to anyone, i.e. foreign individuals or companies may acquire real estate in terms of land, buildings or apartments without restrictions and without a special need for licenses. This implies, that a foreign investor may for any investment project acquire the land to build e.g. a factory thereon. It also means that foreign investors may purchase real estate directly from the seller or if real estate is held by a legal entity in the sense of a special purpose vehicle, he may acquire such shares.

If an investor acquires real estate directly by means of a purchase contract such purchase contract on real estate requires, to be legally valid, a notarial deed.

The most common feature is, that the seller has already appointed a notary public taking care about the real estate, who has already a prepared draft sales and purchase contract for the object of the sale. The parties conclude such contract in front of the notary public, who has usually his seat at the place of the real estate in question. The notary then receives the powers by both the seller and the purchaser to arrange for the registration of the sale in the land register, by means of which the sales transaction is accomplished. Such powers also include any amendmends in the entries in the register, like applying for the deletion of mortgages, which had been inserted by the seller previously or entry of new mortgages, which are used to finance the acquisition.

The process registering the acquisition in the land register is twofold . In the first stage the priority notice will be registered in the land register. This causes, that the transfer of ownership is reserved for the buyer. Thereafter the purchase price will be paid and upon the real estate acquisition tax being paid the new ownership will be registered in the land register and subsequently the priority notice deleted.

Costs involved are roughly:

- About 1% of the purchase price for notarial fees. These may increase or decrease depending on the purchase price and the actual involvement of the noatry public. Is there a need for the purchase price to be paid into a notarial trustee account an additional charge becomes due.
- 6.5% of the purchase price for real estate acquisition tax, which is raised instead of the value added tax. That tax varies between the various states in Germany. The highest rate is 6.5%, the lowest 3.5%. Most of the federal states charge 5 – 6.5%. Only once that tax has been paid, the purchaser may be entered into the land register as the new owner of a real property.
- 0.5% of the purchase price for registration fees at the land register.
- If brokers are involved to bring seller and purchaser together, they charge at least 3.48% net of the purchase price plus value added tax. This is the mandatory minimum. Increases are possible, 6% plus VAT is common in areas where the market allows such fees.

Upon the real property being transferred, the landlord has to pay real estate tax on an annual basis, usually divided into 4 instalments p.a.

In addition, the landlord is responsible for all utilities and insurances. If the real estate is solely owned by him and does not consist also of shared property, like in condominium apartments, the landlord needs to comply with all building permits and maintenance obligations on his own.

If the landlord has purchased an apartment in a shared property, the owners assembly appoints a facility administration, which will be in charge of administering and maintaining the property, against a fee. The landlord pays a monthly fee to the administration, which by middle of a year submits the final balance for the previous year.

If landlords rent real property to tenants for lease, they need to declare tax on the income. Foreign landlords otherwise not taxable in Germany will then make a tax declaration only for that limited income in relation to the real estate acquired. In so far such foreign real estate investor, who is not resident himself, is then only limited taxable under German tax law.

7. Export from Germany

In principle, there are no export restrictions. However, there are certain restrictions on products, which are for military or dual use. Also, there are certain restrictions on other products like waste material, nuclear waste, natural resources, pharmaceuticals and narcotics. Lastly restrictions are imposed from time to time in terms of international political embargoes towards certain countries. Such matters are dealt with under German Foreign Trade Law and are heavily influenced by EU policy and legislation.

In principle, one must differentiate between exports to European countries, which are members of the EU and to other countries.

7.1 EU Countries

Exports to other EU countries, which are member states of the Schengen Treaty, are not considered exports any longer. Therefore, the terminology 'transfer of goods' is used rather than 'export of goods'. This is due to the fact that the movement of goods and services is free of customs duties. Consequently, in particular if a consignment is shipped between Schengen and Euro countries, such business is to be seen almost like a domestic sale and delivery.

One obstacle that still exists and prevents an EU internal transnational sale from being a true domestic sale is the difference in taxation rates and systems. For example, the value added tax schemes are different from country to country. Only after a unification of tax schemes, the economic conditions stemming from the legal regulatory framework within the EU area would be really similar and create a real single market with equal conditions.

7.2 Arab Countries

Export figures to the Arab World are positive. There are no restrictions, unless under the German Foreign Trade Law. Exports from Germany to Arab countries may be divided into two groups. Export to such countries with which the EU has concluded association agreements, which are the Mediterranean countries at large and this with whom such neither association or free trade agreement do not exists, such as the GCC countries so far.

German exporters should observe the respective export documentation required for the country of destination and the norms in each country relating to packaging and labelling. There are certain shipping agents in Germany who are very specialised in exporting to certain Arab countries and also maintain a well-established network of corresponding agents in Arab countries.

Export guarantees for most Arab countries are available through the German Export Guarantee Insurance Euler Hermes.

Specialised banks also offer export financing. In particular the bigger German banks, who also maintain regional offices in e. g. Cairo, Manama and Dubai, but also the

network of German saving banks, who maintain close links to banks in the Middle East, may be approached. Additionally, some banks from the Arab world maintain operational bank branches in Germany, in particular in Frankfurt, namely Arab Bank (head office Amman), Arab Banking Corporation (head office Manama) and Misr Bank (head office Cairo).

7.3 German Foreign Trade Law (AWG)

The German foreign trade law provides for the export restrictions whenever an export could

- endanger the security of Germany, or
- disturb peace among the nations, or
- damage Germany's ex-territorial relations with other countries.

Export control is supervised by the federal Office for Economic Affairs and Export Control, https://www.bafa.de/EN/Home/home_node.html

Export of guns and military equipment is prohibited, unless certain permission was granted upon application. This permission is granted by the federal government for a certain consignment to a certain country. There is a list of countries to which such exports are not permitted (Weapons embargo). At the time this guide is published, such prohibition was imposed in the Arab World on Iraq, Lebanon, Libya, Syria Sudan and Yemen.

There are embargoes on some countries, where one may differentiate between total or partial embargoes. Total embargoes allow only deliveries for humanitarian reasons. The last such total embargo was the one on Iraq with the possibility of trading oil for food under UN supervision. Currently there is no total embargo in force, which Germany would have joined.

Relating to partial embargoes, usually only certain types of business transactions are prohibited. Also embargoes go against certain individuals, accused of war crimes and humanitarian activities in various countries. Therefore, for exports the management, and ownership of receiving entities might have to be scrutinized on links to persons under such sanctions. These sanctions relate not only to the export of physical goods but also the provision of services..

There are prohibitions in the framework of anti-terrorism campaigns against certain institutions and individuals. Exporting to such persons or financial transactions with them are prohibited and fines may be imposed. A list of such persons can be obtained through various online platforms of the EU and Germany.

Three groups of products require permission for export. These products are listed in list A of the Foreign Trade Order (AWV). The list differentiates between three groups of products, which are

- weapons, ammunition and defence material;
- other similar material like electronic shockers used by the police and certain torture instruments;
- dual-use goods, i.e. products which can be used both for civil as well as military purposes. That part of the list contains around 650 items from following products groups, among others:
 - nuclear equipment and materials
 - electronics
 - computers
 - telecommunication and information security items
 - aircraft electronics and navigation
 - certain chemical substances.

In such cases, export permission always has to be applied for unless the export takes place within the EU. Additionally, there is an obligation for the exporters to apply for an export permission if goods are not listed on list A, the export list, but could be or are designed to be used for purposes, which cause international concern, i.e. nuclear programs or military purposes, and if they are destined for certain listed countries. For the transfer of goods with a military character within the EU, permission is also required. Dual-use goods may be transferred freely within EU countries.

Provisions of the AWG prohibit German exporters to join boycotts, like the Israel boycott of the Arab states. Joining a boycott in that sense means making negative declarations relating to the fact that a certain consignment would not originate from a certain (boycotted) country. It is possible, however, to make positive declarations, like the consignments originates positively from a certain country, like Germany or another EU country, etc.

8. Intellectual Property Rights

Intellectual property rights can be extremely valuable to a company. Therefore, Germany is keen to do its utmost to protect them. The tradition of protecting intellectual property goes back to the time of industrialisation in Germany in the second half of the 19th century. Germany is a member of WIPO, the World Intellectual Property Organisation (www.wipo.int) and is a signatory to the framework of international conventions available in that field.

Intellectual property rights can be divided into the protection of:

- trademarks, see below;
- utility designs, (*Gebrauchsmuster*) i.e. machinery, technical equipment to be registered at the German Patent and Trademark Office. This is similar to a patent, but contrary to a patent it cannot be registered for manufacturing processes;
- industrial designs, (*Geschmacksmuster*) i.e. the real design in terms of shape or surface can be registered as such at the German Patent and Trademark Office;
- patents, see below;
- copyrights, which protect works of authors, software etc. Important is that the law protects the author even if he was employed. In that case it does not protect the employer. Registration is not required for the protection to come into effect. Copyrights cannot be sold, only inherited, but their usage can be licensed. The protection period is at most 70 years after the death of the author, 15 years for software and 50 years for photographs.

All registrations for intellectual property rights have to be made at the German Patent and Trade Mark Office in Munich, www.dpma.de.

8.1 Trademarks

Trademarks are protected by the Trademark Law of 1995, which replaced previous regulations. To enjoy protection, it is required to register the trademark with the German Patent and Trade Mark Office located in Munich. The Patent Office checks the trademark to be registered based on its distinctiveness. This check is done even if the applicant submits registrations of the trademark with other offices.

An application has to be made for the registration. The foreign owner has to appoint a local agent, e.g. a law firm or patent & trademark attorney in Germany. Along with the written application on a form provided by the Patent Office, the identity of the applicant, a reproduction of the trademark and the information into which class the entry shall be made has to be submitted along with the fees, which are € 300.00 for three classes and € 100.00 for each additional class. Details may be found here: <https://www.dpma.de/english/services/fees/trademarks/index.html>

The protection period is 10 years and may be prolonged for further terms of 10 years. The trademark has to be used, otherwise the protection expires.

In case of infringements by third parties, the owner has the right to ask for an injunction to stop the infringement and may demand damage compensation.

However, German law does not know punitive damages, like common e.g. in the USA. But basically, the owner has the choice to ask for either:

- compensation of actual damages suffered;
- payment of a deemed license fee in accordance with market conditions for the time of unlicensed exploitation, or
- payment of the profits the infringing party generated from the unlicensed usage.

Additionally or alternatively, it is possible for a foreign, non EU company to register the trademark on European level as a Community Trademark. The protection potentially covers all EU member states, but must at least cover 3 member states and the usage requirement is limited to one of these states. Therefore, the Community Trademark may be a very cost-effective tool for the Arab trademark owner, as the use in all markets may be uncertain but the coverage is wider.

8.2 Patents

The protection of patents is regulated under the Patent Law of 1981 and protects new technical inventions. Applications have to be submitted to the German Patent Office in Munich. Genuinely patents registered here are protected in Germany. Applicants may choose to register the patent only for Germany or a European patent under the European patent Convention with 38 member states or internationally under the PCT convention administered by WIPO.. Applicants should appoint a local agent, e.g. a law firm or a patent attorney in Germany. Along with the written application on a form provided by the Patent Office, the identity of the applicant and a technical description of the invention has to be submitted along with the fee, which is € 350.00 for a submission without research request on national level. Further details may be found here: <https://www.dpma.de/english/services/fees/patents/index.html> . On the date of receipt of the application, the priority right starts relating to other persons also submitting a patent application for the same invention. It is important, however, that the invention was not made public yet. As the technical check-up on the invention is quite time-consuming, the waiting time may be between 2 to 2.5 years after submission of the application until the patent is registered.

The initial application can be made in English, however a notarised translation into German should then be submitted as well.

Patents enjoy a protection period of 20 years with the possibility to prolong for another 5 years. There are annual fees to be paid to maintain the patent registration during the protection period. The fee schedule is progressive, i.e. the fees increase gradually with the duration of the protection period, starting with € 70.00 for the third year and ending with € 1,940.00 after 20 years.

Registered patents may be sold or the right of use licensed. Such patent licenses can be registered with the Patent Office.

Infringements can be fought against at courts based on the principles mentioned above relating to trademarks.

There is a European Patent based on the European Patent Convention, which can be registered and is then valid in the member states of the EU.

9. Contract of Sale under German Law: Some Particularities

The contract of sale under German law is regulated in the German Civil Code (BGB). It shows one particular feature which is not found in French, English or Arab laws, namely that one has to differentiate between the contract of sale and the contract for the transfer of ownership of the object of the sale.

Therefore, as a contract usually consists of two corresponding declarations of intent, four consenting declarations of intent are required in order to pursue a full sale of goods including its delivery, i.e. two contractual agreements.

The first contract is the contract of sale under which seller and purchaser agree that a certain item is to be sold. This is an agreement on the obligation to transfer the ownership.

Example: A agrees with B to sell him a car. The parties agree on the type of car and its price. The contract of sale is concluded. The result is that each party is now obliged to fulfil its obligation under that agreement. A is obliged to deliver the car and to transfer the ownership of that car to B. B is obliged to pay the purchase price.

The second contract is the contract for the delivery and the transfer of ownership as well as the transfer of the purchase price.

This separation of business transactions is important, as it provides flexibility for the transfer of ownership and consequently the transfer of risk with or without transfer of ownership. Consequently, a purchaser may be entitled to the ownership of an item already having possession of the object of the sale, but not yet being the legal owner.

9.1 Retention of Title

Based on the above mentioned differentiation between a contract of sale and a contract of transfer of ownership, the legal institute of retention of title was developed, which is unknown in Arab laws and therefore difficult to negotiate, agree and enforce in bilateral trade relations between Arab and German businessmen¹⁵.

The retention of title means that a contract of sale is concluded and the goods are delivered, but the transfer of ownership is delayed until the purchase price has been paid in full. Therefore, with such transactions in Germany, the owner, i.e. the seller may still claim the re-transfer of the sold goods under a validly concluded purchase contract as he is still the owner, although the sold goods are already in the possession of the buyer at his risk. Such a re-transfer of goods is possible if the purchaser does not meet his payment obligation.

There is even the possibility to prolong that retention of title through to the second purchaser from the first purchaser. If the title of ownership has not been transferred from the original seller to the purchaser and that purchaser sells the goods again and hands over the goods, this second purchaser does not gain the ownership as the first

¹⁵ In fact the Egyptian Civil Code (Art. 430) and so other Arab Civil Codes influenced by it know the contractual agreement to make the transfer of ownership conditional on the purchase price being paid in full, even when the sold object has already been delivered to the buyer. The grade of security by that fall however short in comparison to the grade of protection developed by the retention of title under German law.

purchaser had possession of the item but not its title. Such scenarios are important, e.g. in case one of the purchasing parties enters into insolvency, as such goods cannot be brought into the assets of a company because they are not yet the property of such entities. The real owner then has the right to ask for the return of such goods. The retention of title therefore is a tool for trade financing.

9.2 General Terms and Conditions (AGB)

Very often, General Terms and Conditions (abbreviated in German language as 'AGB', hereinafter referred to as GTC) are attached to offers or invoices. The question is: when do they become a valid part of a concluded contract? This is crucial in particular when both parties to a contract submit their offers referring to their GTC. It then depends on the contents of the particular GTC. However, according to a special law covering GTC and their usage, inserted into the German Civil Code, GTC can only be a valid part of a contract if they are actually submitted or can be viewed at a clearly visible place in a shop or virtually on the website of its user. The law views the matter from the aspect of consumer protection.

Such GTC often contain retention of title, interest for delays and place of jurisdiction in Germany at the place of the issuer and applicability of German laws. It is evident that such GTC are not always suited for international transactions. Therefore, care should be exercised in the usage and application of such GTC when it comes to international transactions with other legal cultures. Vice versa, from an Arab exporter's point of view, he might consider making use of such vehicles, even if not available in his own legal environment.

9.3 Compensation for wrong or faulty Delivery

The law on sales contracts also provides detailed provisions for wrong or faulty deliveries of goods. Without going into detail in case of a wrong delivery (*example: shampoo was ordered and conditioner delivered*), the wrongly delivered goods should be returned and replaced with the right ones. This being under the condition that it was the mistake of the person obligated to deliver the right item. In case of faulty delivery, including damaged goods, these can principally be repaired or exchanged or the price reasonably reduced.

Additionally, the person who suffered damage may ask for compensation. Compensation is first of all the compensation of real damage caused strictly by the damaging event. There is no punitive damage under German law. There is, however, the compensation for lost profits. But amounts awarded under this principle are usually not high.

Therefore, the purchaser basically has four options in case of compensation claims: either to ask for a rectification/repair, replacement, reduction of the purchase price or compensation.

Such claims are a matter of warranty, the basic provisions of which are regulated in the chapter "Contract of Sale" in the German Civil Code. The warranty periods are 2 years for movables, 5 years for buildings and 30 years for certain rights manifested in the real estate register. Warranty may also be excluded by contract unless the sales was relating to consumer goods, where a minimum of 1 year is mandatory.

9.4 Product Liability

The product liability of producers is established in Germany in the Product Liability Law. Product liability is in the end the liability of the producer of a product for the danger this product causes to third persons, like users. It obliges him to compensate damages to persons the product causes due to product flaws, like injury or death.

The *producer* is the actual manufacturer and also the entity, which suggests being the producer by identifying its name with the product as producer even it had been manufactured elsewhere. A *product* can be any movable item. A *flaw* of a product is any deviation from the security standard it is said to have or should have in consideration of its intended purpose at the time of introduction to the market.

The producer is discharged from liability if he did not introduce the product to the market or if the product was fit for use according to the technological standards at the time of introduction to the market. It is not considered flawed according to the law if a similar product is introduced to the market later with better security standards.

While the Product Liability Law has a general application to all products, there are also specific provisions regulating such matters in other specific laws, e.g. the medicines law.

10. Court System

Germany has a diversified court system, which is divided into courts according to the subject matter and inside that particular court structure again into several instances.

With respect to the constitution, there are the constitutional courts of each of the 16 German states. There are no instances here. Additionally, there is the Federal Constitutional Court, where whenever a person feels that a certain matter violates the federal constitution, he or she may object such an act or decision. In addition, this court has competence in various matters where different constitutional organs dispute with each other.

There are administrative courts, where persons or administrative institutions may raise objections against acts or decisions made by administrative bodies, like municipalities etc. Such courts have three levels or instances starting with the Administrative Court, via the state's Higher Administrative Court and ending with the Federal Administrative Court.

For fiscal matters, there are the Fiscal Courts and the Federal Fiscal Court. For matters of social subsidies, the Social Court, Regional Social Court and Federal Social Court.

In principle, each party to a court proceeding initially has to bear its own expenses. However, as a rule, the court decides that in the end, the losing party has to bear the expenses for court and lawyer fees. An exception to that rule is the labor courts of first instance.

10.1 Civil Courts

In the daily life of the citizens and legal entities, the civil court structure is the most important one. Civil courts have jurisdiction over purely civil matters in terms of commercial matters, civil matters between parties, criminal law matters and – contrary to classical Arab legal culture – jurisdiction on matters relating to the civil status. This is due to the fact that Germany understands itself as a secular state, where the civil status matters of the citizens and other persons being resident in Germany shall not be treated according to their religion but instead dealt with by the country's secular court structure, which is mandatory. Therefore, matters of family law and inheritance law are dealt with by the respective chambers at the civil courts.

The court structure is as follows:

- District Courts / Regional Courts
- Higher Regional Courts
- Federal High Court.

District and Regional Courts have the same jurisdiction with respect to the issues they deal with, however certain matters of low value in terms of amounts in dispute, i.e. less than € 5,000.00, enforcements, register affairs, such as land register, company register as well as minor criminal offences etc., are handled by the District Courts. All other matters are dealt with in first instance by the Regional Courts. The Higher

Regional Court and the Federal High Court have jurisdiction as court of appeal and court of revision respectively.

At the Regional Courts, there are special chambers established for commercial matters including litigation on negotiable instruments like cheques, promissory notes and bills of exchange.

10.2 Labor Courts

There are certain Labour Courts for labor disputes between employer and employees. They have three instances: the Ordinary Labor Courts, the Regional Labor Court and the Federal Labor Court. At labor courts of the first instance, usually each party bears its own expenses for court and lawyer fees.

10.3 Litigation Expenses

Litigation expenses as mentioned above are recoverable if the party incurring the expense obtained a judgement in its favor.

Litigation expenses are basically lawyer fees and court fees. The fees are determined by the amount in dispute or as per the value given to a certain matter. There are lists of fees for such amounts in dispute that courts have to and lawyers may charge. Such fees are mandatory in court procedures. Consequently, lawyer's contingency fees, i.e. success fees, are prohibited in principle. Therefore, in particular in cases about compensation of damage it does not make sense to increase the amount claimed just to attract a lawyer to accept a case, like in the US. Additionally, there are no punitive damages under German law, which would attract the lawyer to accept a case.

To such fees, one has to add the actual costs incurred in process, which are other expenses, like translation costs, expert fees for appraisals, etc.

10.4 Arbitration

Instead of litigating a dispute in front of ordinary courts, parties may decide to resolve their disputes through arbitration. The advantages of arbitration are in principle that the disputing parties meet behind closed doors. Therefore, matters do not become public, as it is potentially the case in ordinary court hearings, where the hearings are open to the public. The other classical advantage is that parties may choose the arbitrators, who can be experts in the subject matter and not necessarily judges, who might not always be qualified to look into certain specialised matters like the technical aspects of a dispute or also the laws of other countries, which is important in matters with international orientation.

The regulations on arbitration are integrated in the Code on Civil Court Procedures. The regulations follow the UNCITRAL Model Law on International Commercial Arbitration. Courts just step in upon application of one party if the other is in default, like in the appointment of its arbitrator. The law provides for 3 arbitrators if the parties do not agree otherwise. The important principle is that parties should be equally represented and that the arbitrators are independent from the parties. Arbitrators may

be lawyers, judges or experts in any particular field. The language and place of arbitration can be chosen by the parties.

The arbitrators will pass an arbitral award in the end, which is binding for the parties. The arbitral award is final in principle. There are only a few procedural reasons that may make a court cancel an arbitral award.

If one party does not comply with its obligations under an arbitral award, the other party may apply for the recognition and enforcement of the arbitral award with the court, like e.g. a claim for payment. The arbitral award should not contain matters violating principles of public order in Germany.

There are several institutions for arbitration in Germany. The most important one is the German Institute for Arbitration. This institution is a registered association, located in the city of Bonn, maintaining own arbitration rules currently of 2018, which can be viewed or downloaded from their website www.disarb.org.

Obviously, other arbitration institutions are frequently used in Germany. This is in particular the ICC, which maintains own structures in Germany as well, www.ICCGermany.de.

10.5 Enforcement of Foreign Judgements and Arbitral Awards

For the recognition and enforcement of foreign arbitral awards, the arbitral provisions in the Civil Court Procedures Act refers to the provisions of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

Basically, the application for the recognition and enforcement of a foreign arbitral award or a foreign judgement has to be submitted to the local Higher Regional Court in charge at the place of the party in dispute in Germany. The court pursues a summary procedure to check whether the foreign judgement or award

- does not conflict with German principles of public order;
- whether the party against whom the title shall be enforced was given sufficient opportunity to be heard at the foreign court or arbitral panel;
- was based on just procedures;
- can be recognised on the basis of reciprocity.

The principle of reciprocity is obviously very important. It means that a similar judgement or arbitral award from Germany should also be recognisable in the country the title originates from. That is to say the German court would recognise the foreign title only if also the other country principally recognises German titles in turn.

It should be noted that this procedure cannot be replaced by submitting a foreign judgement to the Embassy of that country in Germany and from there serving it to the debtor.

11. Links to the www

- **links to Germany:**

www.germany.info, a detailed website introducing Germany and doing business in Germany, maintained by the German Embassy in Washington DC.

www.invest-in-germany.de a comprehensive guide on Germany, its federal states and investment climate and framework.

- **Links to the official websites of the 16 states of Germany also containing English language presentations are as follows:**

Baden Württemberg: www.baden-wuerttemberg.de

Bavaria: www.bayern.de

Berlin: www.berlin.de

Brandenburg: www.brandenburg.de

Bremen: www.bremen.de

Hamburg: www.hamburg.de

Hesse: www.hessen.de

Mecklenburg-West Pomerania: www.mecklenburg-vorpommern.de

Lower Saxony: www.niedersachsen.de

North Rhine-Westphalia: www.nrw.de

Rhineland Palatinate: www.rlp.de

Saarland: www.saarland.de

Saxony: www.sachsen.de

Saxony-Anhalt: www.sachsen-anhalt.de

Schleswig-Holstein: www.schleswig-holstein.de

Thuringia: www.thueringen.de

- **Links to German institutions**

German Patent and Trademark Office: www.dpma.de

German Institution for Arbitration: www.disarb.org

12. Useful Addresses

Ghorfa

Garnisonkirchplatz 1
10178 Berlin
Tel: ++49-30-27 89 07 – 11
Fax: ++49-30-27 89 07 49
Website: www.ghorfa.de
Email: ghorfa@ghorfa.de

DIHK (Federation of German Chambers of Industry and Commerce)

Breite Str. 29
11052 Berlin
Tel: +49 - 30 – 203 08 – 24 00
Fax: 030 – 203 08 – 24 44
Website: www.dihk.de

BDI (Federation of German Industries)

Breite Straße 29
10178 Berlin
Tel: +49 30 2028-0
Fax: +49 30 2028-2450
Website: www.bdi.eu

Arab Embassies in Germany

Algeria

Görschstr. 45 – 46
13187 Berlin
Tel: 030 – 43 73 70
Fax: 030 – 48 09 87 16
Website: www.algerische-botschaft.de
Email: info@algerische-botschaft.de

Bahrain

Klingelhöfer Str. 7
10785 Berlin
Tel: 030 – 868 777 77
Fax: 030 – 868 777 88
Website: www.mofa.gov.bh
Email: info@bahrain-embassy.de

Comoros

Avenue Adolphe Lacomblé n°69
1030 Brussels – Belgium
Tel: +32 2 779 58 38
Fax: +32 2 779 58 38
Website: <https://www.comoros-embassy.eu/>
Email: mission@comoros-embassy.eu

Djibouti

Kurfürstenstrasse 84
10787 Berlin
Tel.: 030 263 901 57
Fax.: 030 269 341 65
Website: www.dschibuti-botschaft.de
Email: info@djibouti-embassy.de

Egypt

Stauffenbergstr. 6/7
10785 Berlin
Tel: 030 – 477 54 70
Fax: 030 - 477 10 49
Website: www.egyptian-embassy.de
Email: embassy@egyptian-embassy.de

Iraq

Pacelliallee 19-21
14195 Berlin
Tel: 030 – 814 880
Fax: 030 – 814 88 222
Website: www.iraqiembassy-berlin.de
Email: info@iraqiembassy-berlin.de

Jordan

Heerstr. 201
13595 Berlin
Tel: 030 – 36 99 60 – 0
Fax: 030 – 36 99 60 – 11
Website: www.jordanembassy.de
Email: jordan@jordanembassy.de

Kuwait

Griegstr. 5 - 7
14193 Berlin
Tel: 030 – 89 73 00 0
Fax: 030 – 89 73 00 10
Website: www.kuwait-botschaft.de
Email: info@kuwait-botschaft.de

Lebanon

Berliner Str. 127
13187 Berlin
Tel: 030 – 47 49 860
Fax: 030 – 47 48 78 58
Website: www.libanesische-botschaft.de
Email: info@libanesische-botschaft.de

Libya

Podbielskiallee 42
14195 Berlin
Tel: 030 – 200 596 0
Fax: 030 – 200 596 96
Website: www.libyanembassy.de
Email: info@libysche-botschaft.de

Morocco

Niederwallstr. 39
10117 Berlin
Tel: 030 – 206 12 40
Fax: 030 – 206 12 420
Website: www.botschaft-marokko.de
Email: kontakt@botschaft-marokko.de

Mauritania

Koenigin-Luise-Str 9
14195 Berlin
Tel: 030 – 897305 - 0
Fax: 030 – 897305 - 62
Website: www.mauretaniembassy.de
Email: info@mauretaniembassy.de

Oman

Clayallee 82
14195 Berlin
Tel: 030 – 81005 - 0
Fax: 030 – 81005 - 199
Website:
Email: botschaft-oman@t-online.de

Palestine

Rheinbabenallee 8
14199 Berlin
Tel: 030 – 206 177 - 0
Fax: 030 – 20 61 77 - 10
Website: www.palaestina.org
Email: info@palaestina.org

Saudi Arabia

Tiergartenstrasse 33/34
10785 Berlin
Tel: 030 – 88 92 5 – 0
Fax: 030 – 88 92 5 – 179
Website: www.mofa.gov.sa
Email: deemb@mofa.gov.sa

Somalia

Potsdamer Straße 144
10783 Berlin
Tel: 030 - 23 63 00 10
Fax: 030 - 23 63 00 11
Email: somaliembassyberlin@gmail.com

Sudan

Kurfürstendamm 151
10709 Berlin
Tel: 030 – 89 06 98 0
Fax: 030 – 89 40 96 93
Website: www.sudanembassy.de
Email: secretary@sudan-embassy.de

Syria

Rauchstr. 25
10787 Berlin
Tel: 030 – 50 17 70
Fax: 030 – 50 17 73 11
Website: www.mofa.gov.sy/berlin-embassy
Email: info@syrianembassy.de

Tunisia

Lindenallee 16
14050 Berlin
Tel: 030 – 36 41 07 0
Fax: 030 – 30 82 06 83
Website: www.tunesien.tn
Email: at.berlin@diplomatie.gov.tn

United Arab Emirates

Hiroshimastr. 18 - 20
10785 Berlin
Tel: 030 – 51 65 16
Fax: 030 – 51 65 19 00
Website: www.uae-embassy.de
Email: berlinemb.amo@mofaic.gov.ae

Qatar

Hagenstr. 56

14193 Berlin

Tel. 030 – 86 20 60

Fax: 030 – 86 20 61 50

Website: www.berlin.embassy.qa

Email: berlin@mofa.gov.qa

Yemen

Schmitt-Ott-Str. 7

12165 Berlin

Tel: 030 – 89 73 05 – 0

Fax: 030 – 897 305 – 62

Website: www.yemenembassy.de

Email: info@botschaft-jemen.de

