PANORAMIC

DISPUTE RESOLUTION

Germany

LEXOLOGY

Dispute Resolution

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Bird & Bird

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LITIGATION

Court system

What is the structure of the civil court system?

The ordinary courts administer civil litigation proceedings in Germany. All ordinary courts are at the state level. One exception from this general rule is the Federal Court of Justice as a supreme court (BGH). The Courts Constitution Act (GVG) regulates work of ordinary courts. The organisational structure does not vary widely from state to state: there are the local courts , the regional courts, and the higher regional courts. However, in Bavaria, there is also the Bavarian Highest Regional Court, which was re-established in 2018 after being dissolved in 2006. In civil matters, the re-established Bavarian Highest Regional Court has jurisdiction to decide on appeals on points of law and leap-frog appeals and cases that, in other states, would fall under the jurisdiction of the higher regional courts.

Currently, in Germany there are:

- more than 600 local courts that have jurisdiction over small claims with amounts less or equal to €5,000. According to section 23 of the GVG, local courts have jurisdiction over civil claims arising out of tenancy of residential property or concerning the existence of such a tenancy, disputes concerning wildlife damage, and claims arising out of a contract for a life annuity, life endowment or for vacation of premises that is connected with the transfer of possession of a piece of land. Proceedings in the local courts are conducted by a sole judge;
- 116 regional courts (after the separation of the Berlin Regional Court into two independent courts in 2024) that have jurisdiction over all civil disputes that are not assigned to the local courts. For instance, if the amount of dispute exceeds €5,000. Furthermore, the regional courts have exclusive jurisdiction, irrespective of the value of the matter over: claims brought against the fiscal authorities based on civil service law; claims brought against judges and civil servants for overstepping their official powers; claims based on false, misleading or omitted public capital market information; disputes concerning a customer's order rights; and claims deriving from the Corporate Stabilisation and Restructuring Act. The regional courts also have appellate jurisdiction over decisions of local courts. If procedural law does not provide for a decision to be made by a judge sitting alone, the civil divisions of the regional courts are composed of three members, including the presiding judge;
- 24 higher regional courts that have jurisdiction over disputes arising out of arbitration proceedings (section 1062 of the Code of Civil Procedure (ZPO)) and disputes related to capital markets law. The higher regional courts also have jurisdiction in civil matters for hearing and ruling on appeal against decisions of the local courts in the matters decided by the family courts and appeal against decisions of the regional courts.
- the Federal Court of Justice with a seat in Karlsruhe. In civil law matters, the Federal Court of Justice has jurisdiction for hearing and ruling on the legal remedies of appeal on points of law only, immediate appeal on law only in lieu of an appeal on fact and law, complaint on points of law only and immediate complaint on points of law only in lieu of a complaint . The panels of the Federal Court of Justice shall give decisions sitting with five members, including the presiding judge.

Furthermore, specific civil divisions are established in the higher regional courts, focusing on different subject matters such as banking and financial transactions, insurance policy relationships, insolvency, media, and building and engineering contracts. In the Federal Court of Justice, civil cases are also allocated between panels according to fields of law such as corporate law, insurance contract law, real property law, the law of torts, product liability, medical liability, construction and architectural law, the law on the sale of goods, landlord and tenancy law insolvency law, patent law, etc.

In 2024, the German parliament approved the Act to Strengthen Germany as a place of jurisdiction, which will come into force on 1 April 2025. The new law permits the German federal states to establish specialised courts for commercial matters in the form of commercial courts and commercial chambers within the higher regional courts. The parties to the dispute can agree to resolve the matter under the jurisdiction of such commercial court if the amount of civil dispute is at least €500,000. One of the main features of such courts and chambers is that proceedings should be in English.

Several international commercial chambers were already established in Germany at the level of the regional courts:

- the Chamber for International Commercial Disputes of the Regional Court of Frankfurt;
- the Chamber for International Commercial Disputes of the Regional Court of Hamburg;
- the Stuttgart Commercial Court (Division of the Regional Court of Stuttgart); and
- the Mannheim Commercial Court (Division of the Regional Court of Mannheim).

Law stated - 23 Mai 2025

Judges and juries

What is the role of the judge and the jury in civil proceedings?

In accordance with German Judiciary ActDRiG,qualification to hold judicial office is acquired by anyone who concludes their legal studies at a university by taking the first state examination and completes a subsequent period of preparatory training; the first state examination comprises a university examination covering areas of specialisation and a state examination covering compulsory subjects.

The judge control course of civil proceedings. For instance:

- pursuant to section 136 of the ZPO, the judge shall open the hearings and shall direct their course. The judge shall grant the right to speak and may deny leave to speak to persons who are not complying with his or her orders;
- according to section 286 of the ZPO, the court should decide, at its discretion and conviction, and taking account of the entire content of the hearings and the results obtained by evidence being taken, whether an allegation as to fact is true or false. The judgment sets out the reasons informing the conviction of the judges;
- pursuant to section 278a of the ZPO, the court may suggest that the parties pursue mediation or other alternative conflict resolution procedures; and

- according to book 2 title 7 of the ZPO, the court may examine witnesses.

The German civil litigation proceedings do not presume the existence of juries.

Law stated - 23 Mai 2025

Limitation issues

What are the time limits for bringing civil claims?

The application of the statute of limitations in German law is a matter of substantive law. In accordance with the general rule expressed in section 195 of the German Civil Code (BGB), the standard limitation period is three years.

However, claims to the transfer of ownership of land and the creation, transfer or cancellation of a right to a plot of land or to a change of the subject matter of such a right and entitlements to consideration are statute-barred after 10 years.

Additionally, several types of claims have a 30-year limitation period. These include damage claims based on intentional injury to life, claims that have been finally and bindingly established, claims under enforceable settlements or enforceable documents, claims that have become enforceable upon being recognised in insolvency proceedings, etc.

The limitation period might be suspended if negotiations between the debtor and the creditor are in progress regarding the claim or the circumstances giving rise to the claim until one party refuses to continue the talks. The claim is statute-barred at the earliest three months after the end of the suspension. The limitation period might be suspended due to legal proceedings mentioned in section 204 of the BGB. The parties can agree to extend the limitation period, but the extension cannot exceed 30 years.

Law stated - 23 Mai 2025

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

German law does not require pretrial disclosure of information or evidence. Nevertheless, the parties can agree on pre-litigation steps before initiating proceedings, such as mediation or conciliation, and implement it in the contract as a multi-tiered dispute resolution clause. Generally, the claimant should contact the respondent before bringing a claim; otherwise, according to section 93 of the ZPO, if the respondent has not given cause for commencement of the proceedings, the claimant shall bear the costs of the proceedings if the respondent immediately acknowledges the claim.

Law stated - 23 Mai 2025

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Legal proceedings are initiated by submitting a statement of claim to the court. The statement of claim must include the designation of the parties and the court, exact information on the subject matter, the grounds for filing the claim, and a precisely specified petition. Additionally, the statement of claim should provide information about prior attempts made at alternative dispute resolution proceedings (if any), and it shall also state whether any reasons exist preventing such proceedings from being pursued. It shall state whether any reasons would prevent the matter from being ruled on by a judge sitting alone. From 1 January 2022, lawyers and public authorities are obligated to file submissions exclusively as electronic documents unless this is not possible for technical reasons, in accordance with section 130d of the ZPO.

Concurrently, with filing a statement of claim, the claimant must to pay the court fee in accordance with provisions of the German Court Fees Act.

As for the service of documents within the European Union, Regulation (EU) 2020/1784 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters will apply. For service of documents with parties from non-EU countries, the provisions of the Hague Civil Procedure Convention of 1 March 1954, the Hague Service Convention of 15 November 1965, or one of the bilateral treaties that Germany has ratified may be applied.

Law stated - 23 Mai 2025

Timetable

What is the typical procedure and timetable for a civil claim?

There is no unified timeline for civil proceedings under the ZPO. The length of each case depends on the pending issue, complexity and amount of the dispute. Nevertheless, the court should resolve the dispute swiftly and without unnecessary delays.

Some provisions of the ZPO include an obligatory timetable:

- Pursuant to section 274 (3) of the ZPO, the period of at least two weeks must lapse from the time at which the statement of claim is served and the date of the hearing (time for entering an appearance). If the documents should be served abroad, the presiding judge determines the time for entering an appearance in arranging the hearing date.
- According to section 277 (3) of the ZPO, the period for submitting a written statement of defence shall be at least two weeks. The court has discretion to extend limits.
- Pursuant to section 315 (2) of the ZPO, a ruling pronounced at the hearing at which the court proceedings are declared terminated shall be forwarded as a completely worded document to the court registry prior to the expiry of three weeks, calculated from the date on which the ruling was pronounced.

Generally, the judge opens oral hearings with a summary of the parties' submissions, discussing the potential of amicable dispute resolution with the parties. If an amicable settlement is fruitless, the judge will conduct the court hearing mainly focusing on key matters of the case. The judge will render the judgment if there is no need to explore new evidence and issues. The judgment shall be pronounced at the hearing at which the court proceedings are declared terminated or at a hearing to be arranged immediately. The judgment might be pronounced later than three weeks after the last hearing only for grave cause due to the scope or the complexity of the dispute.

The average length of civil proceedings in the regional courts as a first instance is approximately 13 months. In comparison, the average duration of civil proceedings in regional courts as a second instance is approximately 22 months, and in higher regional courts as a second instance, it is up to 27 months.

Law stated - 23 Mai 2025

Challenging the court's jurisdiction

Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The party presuming that the court lacks jurisdiction to hear the dispute should raise an objection as rapidly as possible regarding the court's lack of jurisdiction before making submissions on the merits of the dispute. Alternatively, if the party does not raise such an objection, the competence of a court would be presumed by the fact that the respondent makes an appearance in an oral argument on the merits of the case and fails to object to the court's lack of jurisdiction in accordance with section 39 of the ZPO.

Furthermore, if the court finds that another court is competent to preside over the dispute, the court before which the action was initially brought would declare, upon corresponding application being made by the claimant, that it is not competent and would refer the legal dispute to the competent court.

Historically, it is rather impossible to obtain anti-suit injunction in Germany. Nevertheless, several years ago, the so-called anti-anti-suit injunction was confirmed by the Higher Regional Court of Munich (OLG München) in the decision of 12 December 2019 No. 6 U 5042/19 to block any action of a party from chasing an anti-suit injunction in another jurisdiction.

Law stated - 23 Mai 2025

Case management

Can the parties control the procedure and the timetable? Can they extend time limits?

Under German law, the parties do not have the discretion to control and set procedural rules and a timetable in civil proceedings. However, the parties may ask to extend deadlines for

submitting documents and postpone hearings if necessary. Generally, the court will grant such an extension or postponement, but rarely, not more than once.

Law stated - 23 Mai 2025

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

According to the general rule, each party has to bring evidence to support its position regarding the dispute. However, the court may direct one of the parties or a third party to produce records or documents, as well as any other material, that is in its possession and to which one of the parties has made reference. The court may set a deadline in this regard and may direct that the documents or records will remain with the court registry for a certain period determined by the court under section 142 of the ZPO. In the same vein, the court may direct the parties to the dispute to produce the files in their possession to the extent they consist of documents concerning the hearing on the matter and the decision by the court in accordance with section 143 of the ZPO.

Law stated - 23 Mai 2025

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

As there is no obligation to produce documents, the privilege of documents does not exist as a concept in German law. However, according to section 383 (1) of the ZPO, lawyers who act as counsel might refuse to give evidence as a witness regarding confidential information of their clients. Such testimonial privilege also applies to in-house lawyers in civil proceedings. Foreign lawyers admitted to the German Bar are recognised for privilege issues.

Law stated - 23 Mai 2025

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

No.

Law stated - 23 Mai 2025

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence shall be taken before the court hearing the case. As a general rule, the court sets a period by court order under which parties should present evidence. When the deadline has expired without success, the evidence may be used only if the court decides, at its discretion, that using such evidence will not delay the proceedings. There are several ways to provide evidence: by expert, by records and documents, by examination of a party, by witness and by visual inspection.

To accept evidence court generally will assess certain issues in this regard:

- facts that are common knowledge need not be substantiated by evidence;
- relevance of the evidence for the particular dispute;
- facts that can be proved by evidence is disputed between parties; and
- necessity of evidence is argued with sufficient certainty (German courts tend to prohibit 'fishing expeditions').

Commonly, witnesses should be examined orally. Evidence by hearing witnesses shall be offered by naming the witnesses and designating the facts regarding which the witnesses are examined. The judge holds the examination of witnesses. The rules for the evidence provided by witnesses shall apply mutatis mutandis to the evidence provided by experts. The court hearing the case shall select the experts involved and determine their number. It may limit itself to appointing a single expert. It may appoint other experts to replace the first expert. In most cases, the expert will prepare a written report, and the court shall set a period for the expert within which he or she renders his or her signed report. The expert shall be remunerated in accordance with the Judicial Remuneration and Compensation Act.

Law stated - 23 Mai 2025

Interim remedies

What interim remedies are available?

Two main options for interim remedies are available under the provisions of the ZPO: claim to seizure and preliminary injunction.

Seizure

Seizure is a remedy to secure compulsory enforcement against movable or immovable property for a monetary claim or a claim that may evolve into a monetary claim. Seizure is an available remedy wherever there is a legitimate concern that, without a writ of pre-judgment seizure, the enforcement of the judgment would be frustrated or be significantly more difficult. The decision regarding the seizure request shall be delivered as a final judgment if the matter is dealt with in an oral hearing, and in all other cases by a court order. The respondent can file an objection against the court order directing the seizure. In its objection, the party filing must demonstrate the grounds that prove that the seizure should be set aside. The court will schedule a hearing for oral argument ex officio. Lodging an objection will not suspend the enforcement of the seizure.

Preliminary injunctions

Meanwhile, preliminary injunctions regarding the subject matter of the litigation are an available remedy given the concern that changing the status quo might frustrate the realisation of the right enjoyed by a party or make its realisation significantly more difficult. The injunction may consist of a temporary deprivation of property (sequestration) and also in the opponent being required to take action or being prohibited from taking it, in particular by prohibiting him from the sale, encumbrance or pledge of a plot of real estate, of a registered ship or of a ship under construction. The court shall determine at its sole discretion which orders are required to achieve the purpose intended.

Moreover, within EU member states, parties can use the European Account Preservation Order as an interim remedy to freeze funds in a debtor's bank account in another EU member state in accordance with Regulation (EU) 655/2014 of 15 May 2014.

Law stated - 23 Mai 2025

Remedies

What substantive remedies are available?

The following types of substantive remedies are available under German law:

- claim for specific performance of obligation;
- claim for damages;
- claim for unjust enrichment;
- vindication claim; and
- withdrawal of contract, etc.

German law does not recognise the concept of punitive damages.

Law stated - 23 Mai 2025

Settlement

Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

As a starting point, pursuant to section 278 of the ZPO, in all circumstances of the proceedings, the court should act to conclude an amicable resolution of the legal dispute between parties. For these purposes, the hearing shall be preceded by a conciliation hearing unless efforts to come to an agreement before an alternative dispute-resolution entity have already been made, or unless the conciliation hearing obviously does not hold out any prospects of success. In the conciliation hearing, the court should discuss with the parties the circumstances and facts as well as the status of the dispute thus far, assessing all circumstances without any restrictions and asking questions wherever required.

The parties may also settle the matter before the court by submitting a written suggestion. The court shall establish a corresponding order that the settlement has been reached.

Furthermore, the court may suggest that the parties pursue mediation or other alternative dispute resolution procedures. If the parties decided to pursue mediation or other alternative dispute resolution procedures, the court shall order the stay of the proceedings.

Law stated - 23 Mai 2025

Enforcement

What means of enforcement are available?

There are different requirements for enforcement of judgment under the ZPO. First, compulsory enforcement may be pursued based on the judgments that have become final and binding, or that have been declared provisionally enforceable. Enforcement of the monetary judgment requires obtaining a certificate of the enforceability in accordance with section 724 of the ZPO.

The court-appointed enforcement officer (bailiff) shall ensure the prompt, full and cost-efficient recovery of monetary claims. Additionally, declaratory judgments cannot be enforced under the ZPO.

If the creditor wants to enforce a debt involving movable assets, a bailiff can seize and sell the debtor's movable assets and transfer money to the creditor. Meanwhile, enforcement against immovable property (eg, real estate) is implemented by entering a debt-securing mortgage for the claim, by enforced auction and by the receivership. The first step would be applying to the Land Registry office where the debtor's property is located to force a security mortgage registered in the creditor's name in the Land Register. The creditor can invoke a forced sale scenario after a forced security mortgage is listed in the Land Register. Moreover, when enforcement action does not lead to any result, the creditor can initiate insolvency proceedings against the debtor.

Typically, enforcement proceedings in Germany are conducted promptly and costs for the enforcement are not expensive.

Law stated - 23 Mai 2025

Public access

Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings in Germany are open to the public. According to section 169 of the Courts Constitution Act, hearings before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio and television or radio recordings intended for public presentation or publication of their content shall be inadmissible. Audio transmissions to a workspace for persons reporting for the press, radio, television, or other media may be

authorised by the court. Audio transmissions may be prohibited to protect the legitimate interests of the parties or third parties or to ensure the proper course of proceedings.

Nevertheless, proceedings, discussions and hearings on family and non-contentious matters shall not be made public. The court may admit the public but not against the will of a participant.

Additionally, according to section 19 of the Act on the Protection of Trade Secrets, court may limit access, in whole or in part, to a certain number of reliable persons, to safeguard trade secrets to documents submitted or presented by the parties or third parties that may contain trade secrets, or to the hearing at which trade secrets could be disclosed, and to the recording or minutes of the hearing.

Law stated - 23 Mai 2025

Costs

Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

There are two types of costs in German civil litigation proceedings: court fees and lawyers' fees. Court fees are regulated by provisions of the German Court Costs Act, while lawyers' fees are regulated by provisions of the Lawyers' Remuneration Act (RVG).

German law adopts the 'cost follows the event' doctrine, which means that the losing party must pay the costs of the proceedings. In cases where each party has prevailed for a part of its claim, the costs will be shared proportionately. The court may impose the entire costs of the proceedings on one of the parties if the amount the other party claimed was relatively small or has resulted in only slightly higher costs. Furthermore, the costs of an unsuccessful appeal shall be paid by the party that has lodged the appeal.

As a general rule, claimants from EU member states or EEA states should not provide security for the costs of the proceedings. Unless multilateral or bilateral international treaties provide otherwise, the court will grant security orders for costs in cases where the claimant resides outside EU member states or EEA countries. The court shall assess the amount of the security upon its sole discretion. In this context, the costs that will accrue to the respondent if it brings countercharges shall not be considered. Finally, the court should determine a period within which security must be provided. The court could withdraw the action if the security is not provided by the deadline.

For instance, in Decision X ZR 54/19 of 1 March 2021, the BGH has expressed position that British claimants should also provide security of costs in German proceedings under section 110 of the ZPO in post-Brexit disputes.

Law stated - 23 Mai 2025

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available

to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency fees are generally prohibited in Germany. Nevertheless, in 2006, the German Federal Constitutional Court stated that such prohibition of contingency fees is incompatible with the freedom of profession and, consequently, unconstitutional. As a reaction to this ruling, section 49 (2) of the German Lawyers Act (BRAO) was amended and declared that agreements based on which remuneration or its amount is made dependent on the outcome of the case or the lawyer's success, or based on which a lawyer is paid part of the amount recovered (contingency fee) are not permissible unless otherwise provided under the RVG.

In turn, according to section 4a of the Lawyers' Remuneration Act, quota litis (an agreement when one party who has a claim challenging to recover agrees with another party to give a part of the amount to obtain his services to recover the rest) may be agreed only if it relates to a maximum monetary claim of €2,000, a collection service is provided out of court or the client, upon reasonable consideration, would be deterred from taking legal proceedings in a particular case without the agreement of quota litis.

Furthermore, in August 2021, the so-called German Legal Tech Act (the Act to Promote Consumer-Oriented Offers in the Legal Services Market) passed the Bundestag (German federal parliament) and came into force on 1 October 2021. The German Legal Tech Act mainly focuses on the regulation of the services offered by legal tech companies that specialise in the mass enforcement of individual claims in the consumer market. The regulation mentioned above also explicitly states that debt collection providers can cooperate with litigation financiers, and the existence of several reporting obligations in the context of participation in litigation funding does not create a conflict of interest and does not prohibit such legal services.

In accordance with section 49b (3) of the BRAO, the payment or acceptance of a part of the fees or other benefits in return for the referral of cases, regardless of whether this occurs in a relationship with a lawyer or a third party of whatever kind, is not permissible. Where several lawyers are working on a case, they may work on the case jointly and divide the fees up amongst themselves in appropriate proportion to the services they each provided and the responsibility and the liability they each held.

Law stated - 23 Mai 2025

Insurance

Is insurance available to cover all or part of a party's legal costs?

Legal costs insurance is regulated by the Insurance Contract Act 2008 (VVG). According to section 125 of the VVG, in the case of legal expenses insurance, the insurer shall be liable to the extent necessary to look after the policyholder's legal interests or the insured person as per the agreement. Practically, after-the-event insurance is available in Germany but is primarily used for consumer disputes and has not yet gained widespread adoption in complex commercial litigation.

Law stated - 23 Mai 2025

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Collective class actions have a complicated history in German law. Generally, class actions have not been one of the central issues of German procedural law. However, in 2018, as a reaction to the 'Volkswagen diesel scandal' and following diesel-related class actions, a model declaratory action was implemented into the ZPO to obtain declaratory relief by means of representative actions.

The following step in the evolution of collective class actions in Germany was the implementation of EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (the Representative Actions Directive) via the adoption of the Consumer Rights Enforcement Act (VDuG), which came into force on 13 October 2023.

According to the provisions of the VDuG, qualified entities may seek injunctions or redress against a respondent who violates consumer rights on behalf of a group of consumers. The VDuG applies to all spheres of German civil law except labour law disputes. Nevertheless, its provisions are mainly focused on protecting consumers and small and medium-sized enterprises. According to the VDuG, at least 50 consumers must be concerned in order to file a collective redress. The higher regional court in the district where the respondent company is located has exclusive jurisdiction for actions under the VDuG.

Furthermore, in a series of landmark decisions (the BGH judgment of 27 November 2019 VIII ZR 285/18 in the ***LexFox*** case and the BGH judgment of 13 July 2021 II ZR 84/20, ***AirDeal*** case) the BGH has expressed the standpoint that the so-called assignment model (a model that bundles the claims of several parties into one claim by assigning them to a legal services provider) is permitted under German law.

Law stated - 23 Mai 2025

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Appeals are an available remedy against the final judgments delivered by the court of first instance. An appeal shall be admissible only if the value of the subject matter is greater than €600 or if the court of first instance has granted leave to appeal in its ruling.

An appeal may only be based on a violation of the law (the law is violated where a legal norm has not been applied or has not been applied properly), or on the facts and circumstances that should have been used as a basis pursuant to section 529 of the ZPO justifying a different decision. The time limit for filing an appeal is one month. This statutory period begins when the fully worded ruling is rendered.

The second appeal on points of law to the BGH is possible against the final judgments delivered by the appellate instance on fact and law. Such an appeal on the points of law could be filed by a party only if the court of appeal has admitted it in the judgment. Moreover, an appeal on points of law should be accepted if the legal matter is of fundamental significance,

or the further development of the law or the interests in ensuring uniform adjudication requires a decision to be handed down by the court hearing the appeal on points of law.

Law stated - 23 Mai 2025

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Generally, foreign judgments from EU member states courts will be recognised under Brussels Regulation (EU) No. 1215/2012 of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Court judgments from Norway, Iceland, Switzerland and Denmark will be recognised under the Lugano Convention 2007.

In cases where the EU Brussels Regulation, Lugano Convention 2007 or other multilateral or bilateral treaties do not apply, the procedure or recognition of foreign judgments is regulated by section 328 of the ZPO. For instance, German courts will refuse recognition if:

- the courts of the state to which the foreign court belongs do not have jurisdiction according to German law;
- the respondent, who has not entered an appearance in the proceedings and who takes recourse to this fact, has not duly been served the document by which the proceedings were initiated, or not in such time to allow him to defend himself;
- the judgment is incompatible with a judgment delivered in Germany, with an earlier judgment handed down abroad that is recognised, or if the proceedings on which such judgment is based are incompatible with proceedings that have become pending earlier in Germany;
- the recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law and, in particular, if the recognition is not compatible with fundamental rights; and
- reciprocity has not been granted.

The enforcement procedure of foreign judgments in cases where the EU Brussels Regulation, Lugano Convention 2007 or other multilateral or bilateral treaties do not apply regulated by sections 722 and 723 of the ZPO. As a general rule, to be enforced in Germany, the foreign judgment should have become final and binding under the law of the country of origin.

Law stated - 23 Mai 2025

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In the European Union, the procedure for obtaining oral or documentary evidence from other jurisdictions is regulated by the Regulation (EC) No. 1206/2001 of 28 May 2001 on

cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

In this regard, the regulation applies to both oral and documentary evidence and stipulates that judicial assistance requests may be communicated directly between the courts. Bilateral treaties may apply for judicial assistance requests outside the European Union.

Law stated - 23 Mai 2025

ARBITRATION

UNCITRAL Model Law
Is the arbitration law based on the UNCITRAL Model Law?

Sections 1025 to 1066 of the Code of Civil Procedure (ZPO), which constitute German arbitration law, are mainly identical to the text of UNCITRAL Model Law on International Commercial Arbitration (1985). However, these sections contain subtle distinctions from Model law:

- pursuant to section 1031 (2) of the ZPO, a form of arbitration agreement is considered to have been complied with also if the arbitration agreement is contained in a document transmitted by one party to the other party, and if, in the event of an opposition having been raised late, the content of that document is regarded, in keeping with common usage, to constitute the substance of an agreement;
- according to section 1032 (2) of the ZPO, until the arbitral tribunal has been formed, a request may be filed with the court to have it determine the admissibility or inadmissibility of arbitral proceedings;
- according to section 1035 (3) of the ZPO, the German courts can provide assistance concerning the appointment of arbitrators as long as the place of arbitration has not yet been determined if the respondent or claimant has their seat or place of abode in Germany; and
- pursuant to section 1057 of the ZPO, unless otherwise agreed by the parties, the arbitral tribunal should decide, in its arbitral award, on the share of the costs of the arbitral proceedings that each of the parties bear.

Law stated - 23 Mai 2025

Arbitration agreements
What are the formal requirements for an enforceable arbitration agreement?

The requirements to form of arbitration agreement expressed in section 1031 of the ZPO:

- the arbitration agreement must be set out either in a document signed by the parties, or in letters, telefax copies, telegrams or other forms of communication exchanged between them that ensure documentary proof of the agreement (section 1031 (1) of the ZPO);

- the form of arbitration agreement is compiled also if the arbitration agreement is contained in a document transmitted by one party to the other party, or by a third party to both parties, and if, in the event of an opposition having been raised late, the content of that document is regarded, in keeping with common usage, to constitute the substance of an agreement (section 1031 (2) of the ZPO);
- reference to a document containing an arbitration clause, this constitutes an arbitration agreement, provided that the reference is such as to make said clause a part of the contract (section 1031 (3) of the ZPO);
- arbitration agreements with consumers must form part of a record personally signed by the parties. The written form required may be replaced by the electronic form. The record or electronic document may not contain agreements other than those relating to the arbitral proceedings (section 1031 (5) of the ZPO); and
- any failure to comply with formal requirements is remedied by a plea being made on the merits of the matter in the arbitral proceedings (section 1031 (6) of the ZPO).

Generally, following the doctrine of separability, the termination of the main contract does not entail the termination of the arbitration agreement in Germany. An arbitration agreement may be terminated by the decision of the parties and, therefore, becomes no longer enforceable. Pursuant to section 1040 (1) of the ZPO, the arbitral tribunal may rule on its own jurisdiction and in this context on the existence or the validity of the arbitration agreement. For that purpose, an arbitration clause should be treated as an agreement independent of the other terms of the contract.

Law stated - 23 Mai 2025

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Book 10 of the ZPO does not specify any special requirements for arbitrators, such as nationality, religion, gender or education. In accordance with article 9.2 of the German Arbitration Institute (DIS) Arbitration Rules, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

The default procedure for appointment of arbitrators is reflected in section 1035(3) of the ZPO. In the case of absence of agreement made by the parties regarding the appointment of arbitrators, the court will appoint a sole arbitrator upon request by one party if the parties are unable to come to an arrangement regarding the appointment of the arbitrator. In arbitral proceedings with three arbitrators, each party appoints one arbitrator; the two arbitrators thus appointed will appoint the third arbitrator, who will act as presiding arbitrator. If a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court will appoint the third arbitrator upon request of a party.

This approach is followed by the DIS Arbitration Rules. According to article 11 of the DIS Arbitration Rules, if the parties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS shall select and appoint the sole arbitrator pursuant to article 13.2. Furthermore, pursuant to article 12 of the DIS Arbitration Rules, if the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee.

The procedure of challenge of arbitrators described in section 1037 of the ZPO. Firstly, the parties are free to agree on a procedure for challenging an arbitrator. Second, absent of such agreement, the party intending to challenge an arbitrator should submit to the arbitral tribunal, within two weeks of having become aware of the composition of the arbitral tribunal a written statement of the reasons for challenging the arbitrator. If the challenged arbitrator does not withdraw from office or if the other party does not agree to the challenge, then the arbitral tribunal decides on the challenge. Third, if the challenge is not successful, then the challenging party may request, within one month of having become aware of the decision rejecting the challenge, that the court decides on the challenge; the parties may agree on a different time limit. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and may make an award.

The grounds for the challenge of an arbitrator are contained in section 1036 of the ZPO. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts about their impartiality or independence, or if they do not meet the prerequisites agreed to by the parties. A party may challenge an arbitrator whom they have themselves appointed, or in the appointment of whom the party has participated, solely for reasons of which the party became aware only after the appointment was made.

The grounds for removal of an arbitrator are contained in section 1038 of the ZPO. Where an arbitrator is unable, whether de jure or de facto, to perform their functions or fails to perform their functions within a reasonable time for other reasons, their mandate will end upon their withdrawal from office or upon the parties agreeing to terminate the mandate. Where the arbitrator does not withdraw from office, or where the parties are unable to agree on the termination of the mandate, each of the parties may request that the court decide on the termination of the arbitrator's mandate.

Meanwhile, in accordance with article 16.2 of the DIS Arbitration Rules, the Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future.

Finally, the International Bar Association Guidelines on Conflicts of Interest may be used in Germany in the context of disclosure of potential conflicts of interest.

Law stated - 23 Mai 2025

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Generally, arbitrators appointed in arbitration proceedings with the seat in Germany are lawyers. Retired judges or professors are also appointed as arbitrators. Reference should

also be made to the DIS endeavour for gender equality in the context of the appointment of arbitrators. According to the DIS, Gender Statistics on the appointment of arbitrators in DIS-administered arbitrations for 2023 show a record high for the appointment of female arbitrators in DIS arbitrations. For instance, 53.85 per cent of the DIS-nominated arbitrators appointed in 2023 were women (up from 44.4 per cent in 2022).

Law stated - 23 Mai 2025

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Book 10 of the ZPO contains in certain sections mandatory provisions that the parties of the arbitration proceedings must comply with:

- the requirements of arbitrability (section 1030 of the ZPO);
- the requirements of form of the arbitration agreement (section 1031 of the ZPO);
- equal parties' rights concerning composition of the arbitral tribunal (section 1034 (2) of the ZPO);
- equal parties' rights concerning an effective and fair legal hearing (section 1042 (1) of the ZPO);
- the court's final decision on the challenge of an arbitrator (section 1037 (3) of the ZPO);
- the court's final decision on the on the jurisdiction of the arbitral tribunal (section 1040 (3) of the ZPO); and
- the right to set aside an award before state courts (section 1059 of the ZPO).

Law stated - 23 Mai 2025

Court powers to support the arbitral process

What powers do national courts have to support the arbitral process before and during an arbitration?

German state courts can assist arbitral tribunals on the following issues:

- determine the admissibility or inadmissibility of arbitral proceedings under request of a party in accordance with section 1032 (2) of the ZPO;
- grant an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration, before or after arbitral proceedings have commenced and upon request by a party in accordance with section 1033 of the ZPO;
- appoint arbitrators if a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court will appoint the third arbitrator upon request of a party in accordance with section 1035 of the ZPO;

- decide on the challenge of an arbitrator under request of a party in accordance with section 1037 (3) of the ZPO;
- decide on the tribunal's decision on its jurisdiction under the request of a party in accordance with section 1040 (3) of the ZPO;
- grant an enforcement of interim measure in accordance with section 1041(2) of the ZPO; and
- provide assistance on taking evidence or by performing any other judicial acts for which the arbitral tribunal is not authorised in accordance with section 1050 of the ZPO.

Law stated - 23 Mai 2025

Interim relief
Do arbitrators have powers to grant interim relief?

According to section 1033 of the ZPO, it is possible for a court to order, before or after arbitral proceedings have commenced and upon request by a party, an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration.

Moreover, under article 25.1 of the DIS Arbitration Rules, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

The interim relief could also be granted by emergency arbitrator under provisions of renovated DIS Sport Arbitration Rules (DIS-SportSchO), which came into force on 1 January 2025. According to article 25.3 of DIS-SportSchO, the Emergency arbitrator can decide on the application of a party seeking interim relief if the arbitral tribunal has not yet been constituted. Meanwhile, Book 10 of the ZPO and the DIS Arbitration Rules does not mention an emergency arbitrator.

Law stated - 23 Mai 2025

Award
When and in what form must the award be delivered?

Book 10 of the ZPO does not specify any time limit for rendering the award. Meanwhile, pursuant to article 37 of the DIS Arbitration Rules, the arbitral tribunal shall send the final award to the DIS for review, in principle within three months of the last hearing or the last authorised submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the arbitral tribunal and take into consideration the circumstances of the case.

According to section 1054 of the ZPO, the arbitral award must be made in writing and signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the

signatures of the majority of all members of the arbitral tribunal will suffice, provided that the reason for any missing signature is stated.

Moreover, the arbitral award should contain the reasons upon which it is based unless the parties have agreed that no reasons need be provided. For the DIS administered arbitral proceedings requirements for an award expressed in article 39 of the DIS Arbitration Rules:

- award shall be made in writing;
- award shall sate the names and addresses of the parties, of any designated counsel representing a party in the arbitration, and of the arbitrators;
- award shall contain the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent;
- award shall contain information about the seat of the arbitration; and
- award shall contain information about the date of the award.

Furthermore, in the final award, the arbitral tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties.

Law stated - 23 Mai 2025

Appeal or challenge

On what grounds can an award be appealed or challenged in the courts?

An exclusive list of grounds for setting aside an arbitral award is contained in section 1059 of the ZPO and de facto mirrors the grounds contained in the UNCITRAL Model Law. According to the aforementioned section, an arbitral award may be set aside only if the party filing the application shows sufficient cause that:

- one of the parties concluding the arbitration agreement did not have the capacity to do so, or that the arbitration agreement is not valid or, if the parties have not made any determinations in this regard, that it is invalid under German law;
- the party filing the application had not been given proper notice;
- the arbitral award deals with a dispute not contemplated by the separate arbitration agreement or not covered by the terms of the arbitration clause, or that it contains decisions that are beyond the scope of the arbitration agreement; and
- the formation of the arbitral tribunal or the arbitral proceedings was not in accordance with a provision of Book 10 of the ZPO or with an admissible agreement in place between the parties, and that this presumably has had an effect on the arbitral award.

As another option the court finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under German law;
- the recognition and enforcement of the arbitral award will lead to a result that is contrary to public policy (***ordre public***).

The application for setting aside the arbitral award must be filed with the court within three months. This period begins on the day on which the party filing the application has received the arbitral award.

According to section 1062 of the ZPO, the higher regional court designated in the arbitration agreement or, if no such designation was made, the higher regional court in the district of which the place of arbitration is located, is competent to decide on applications regarding the setting aside procedure. The decision of a higher regional court can be appealed to the Federal Court of Justice.

The general duration of the setting aside procedure and further appeal may vary from several months up to two years. The costs of the setting aside procedure also follow the 'cost follows the event' rule.

Law stated - 23 Mai 2025

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

The procedure of recognition and enforcement of arbitral awards expressed in Chapter 8 of Book 10 of the ZPO. It should be noted that the procedure for the enforcement of domestic arbitral awards and foreign arbitral awards is separate.

In accordance with section 1060 of the ZPO, compulsory enforcement of the domestic arbitral award may be pursued after the award has been declared enforceable. The application for a declaration of enforceability will be denied, and the arbitral award will be set aside, if one of the grounds for setting aside designated in section 1059(2) of ZPO is fulfilled.

The New York Convention governs the recognition and enforcement of foreign arbitral awards. Furthermore, where the declaration of enforceability will be denied, the court will establish in a declaratory ruling that the arbitral award is not to be recognised in Germany. However, in cases where the arbitral award is set aside abroad after being declared enforceable, an application may be filed seeking to repeal the declaration of enforceability.

Germany is a pro-arbitration jurisdiction, so domestic and foreign arbitral awards are generally declared enforceable in Germany if they do not have any manifest defects that would prevent them from being recognised.

For instance, German national courts will reject enforcement of a foreign award that was set aside by a competent court in another jurisdiction where an award was rendered. This approach was upheld in BGH Decision III ZB 14/07.

Book 10 of the ZPO does not specify a limitation period for enforcing arbitral awards. However, in applying substantive German law, a party may raise an objection to enforcing an arbitral award if 30 years have passed since the award was rendered.

Law stated - 23 Mai 2025

Costs

Can a successful party recover its costs?

Pursuant to section 1057 of the ZPO, the arbitral tribunal should decide, in its arbitral award, on the share of the costs of the arbitral proceedings that each of the parties hold, including the costs incurred by the parties that were necessary to properly pursue their claim or defence.

In this context, the arbitral tribunal will decide at its discretion while taking into account the circumstances of the individual case, in particular the outcome of the proceedings. As mentioned in previous sections, under article 33.3 of the DIS Arbitration Rules, the arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion.

In general, the arbitral tribunals in Germany adopt a 'cost follows the event' method, meaning that the unsuccessful party must pay the successful party's costs. An arbitral tribunal may render award on interest to the extent that the applicable substantive law of the dispute permits a claim for interests. The costs associated with enforcing awards vary based on the amount of the dispute, following the cost schedules for court and lawyer fees. Generally, the losing party should pay these costs.

Law stated - 23 Mai 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR
What types of ADR process are commonly used? Is a particular ADR process popular?

The German Arbitration Institute (DIS) is the leading institution in Germany in administrating arbitration proceedings and other alternative dispute resolution proceedings for national and international commercial disputes.

Arbitration remains the primary ADR tool in Germany. According to the DIS annual statistic for 2023, from the total number of initiated proceedings in 2023 (191), 85 per cent were arbitration proceedings commenced under the DIS Arbitration Rules (163). Meanwhile, only seven proceedings were initiated in accordance with the DIS Mediation Rules. According to statistics, the DIS administers, on average, 250 arbitration proceedings at any given time and has successfully administered thousands of arbitration proceedings throughout its more than 100-year history.

For instance, the DIS can offer the parties:

- administration of arbitral proceedings under the DIS Arbitration Rules including Expedited Proceedings, Supplementary Rules for Corporate Disputes and Dispute Management Rules;
- administration of mediation proceedings under the DIS Mediation Rules;
- administration of adjudication proceedings under the DIS Adjudication Rules;
- administration of conciliation proceedings under the DIS Conciliation Rules;
- expert determination procedure under DIS Rules on Expert Determination;
- administration of arbitral proceedings under the DIS Sport Arbitration Rules; and

- Supplementary Rules for Third-Party Notices.

Law stated - 23 Mai 2025

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There are no mandatory requirements that the parties to litigation or arbitration to consider ADR before initiating proceedings. However, parties can agree to a multi-tiered dispute resolution clause that would oblige them to first address ADR before initiation of litigation or arbitration proceedings.

For instance, in decision I ZB 50/15, the Federal Court of Justice (BGH) has expressed the standpoint that failure to comply with the mandatory terms of multi-tiered dispute resolution clauses does not lead to the arbitral tribunal's lack of jurisdiction, but may result the claim could be as 'currently unfounded'. This position was developed in a further BGH decision I ZB 1/15.

Furthermore, in accordance with section 278a of the Code of Civil Procedure, the court may suggest that the parties pursue mediation or other alternative conflict resolution procedures. If the parties decide to pursue mediation or other alternative conflict resolution procedures, the court shall order the proceedings stayed.

Law stated - 23 Mai 2025

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

Law stated - 23 Mai 2025

UPDATE AND TRENDS

Recent developments and future reforms

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Leading decision procedure

The leading decision procedure (***Leitentscheidungsverfahren***) was implemented in section 552b of the Code of Civil Procedure (ZPO) and came into force on 31 October 2024. According to this procedure, if the appeal raises legal issues whose resolution is relevant to numerous other proceedings, the Federal Court of Justice (BGH) may, upon receipt of a reply to the appeal or after one month from service of the grounds of appeal, designate the appeal proceedings as a leading decision procedure by order. The order shall describe the facts and legal issues whose resolution is relevant to numerous other proceedings. The leading decision procedure aims to set up the law harmonisation in specific complicated categories of cases. Nevertheless, the decision under such a procedure still would not have a binding effect on the lower courts but should be treated as a guide for analogous cases. The very first decision under section 552b of the ZPO was already rendered by the BGH on 18 November 2024 (VI ZR 10/24) on the issue of claims for damages under article 82 of the EU 2016/679 General Data Protection Regulation.

Commercial courts

In 2024, the German parliament approved the Act to Strengthen the Jurisdiction of Germany, which came into force on 1 April 2025. The new law permits the German federal states to establish specialised courts for commercial matters in the form of commercial courts and commercial chambers within the higher regional courts. The parties to the dispute can agree to resolve the matter under the jurisdiction of such commercial court if the amount of civil dispute is at least €500,000. One of the main features of such courts and chambers is that proceedings should be in English.

Draft Bill to modernise Arbitration Law

German arbitration law was last substantially updated in the 1990s. Since then, the landscape of international arbitration and its peculiarities have undergone significant changes, which should certainly be reflected in the national legislation of Germany, which holds the position of an essential arbitration hub in the world. In response to the evolution of international commercial arbitration, on 26 June 2024, the German federal government published its draft bill on the modernisation of German arbitration law (Draft Bill).

The first substantive amendment in the Draft Bill addresses the form of the arbitration agreement. According to the current text of Book 10 of the ZPO, arbitration agreements should generally be concluded in written form. However, according to the Draft Bill, arbitration agreements could be concluded orally. Nevertheless, arbitration agreements with consumers still demand strict formal requirements and should be signed by the consumer.

Second, according to section 1063b of the Draft Bill, English-language documents originating from arbitral proceedings can be submitted to the German courts regarding the setting aside of proceedings without supplying a translation into German. A translation must be provided only where a particular need is given in the individual case.

Third, the Draft Bill proposes, in sections 1047 (2) and (3), discretionary legal provisions allowing oral hearings to be conducted via video conference hearings to clarify this manner of proceeding and further increase legal certainty in this regard.

Another major development that aims to promote publicity of arbitral proceedings is the possibility of publishing the arbitral award and, if applicable, any concurring or dissenting

opinions of arbitrators with the parties' consent. Such publication can be made in anonymised form, in whole or in part.

Furthermore, the Draft Bill allows the possibility of setting aside a procedural award made by an arbitral tribunal that declares lack of jurisdiction if the party filing the application shows sufficient cause that the arbitral tribunal wrongly considered itself to lack jurisdiction.

The comprehensive character of the Draft Bill demonstrates the legislator's intention to substantially modernise German arbitration law and adapt it to the changes that have taken place in the field of international arbitration in recent years.

Law stated - 23 Mai 2025