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RECHTSANWÄLTE

## GERMANY OPENS FIRST "COMMERCIAL COURT" IN STUTTGART AND MANNHEIM



Against the reality of Brexit and its presumed effects on London as a place of jurisdiction, Germany is making progress to increase the attractiveness of its judiciary for major international commercial disputes. Germany has launched initiatives like “Law - Made in Germany”,<sup>1</sup> and is currently discussing the modernization of its civil proceedings as well as the establishment of English-speaking commercial chambers and courts. Within Germany, the State of Baden-Württemberg occupies a top position and has established the first “Commercial Court” in Germany which is open for business at the regional courts of Stuttgart and Mannheim since 1 November 2020.<sup>2</sup> The Commercial Court’s background and goals as well as the associated innovations for civil dispute resolution are summarized in this news briefing.

<sup>1</sup> See [https://www.lawmadeingermany.de/Law-Made in Germany EN.pdf](https://www.lawmadeingermany.de/Law-Made%20in%20Germany%20EN.pdf).

<sup>2</sup> See <https://www.commercial-court.de/en/>.

## Competition of judicial venues

Generally, German law and the German judiciary enjoy an excellent international reputation. They have a lot to offer with well-trained lawyers, reliable and independent courts, cost-effective procedures and efficient rules of evidence. Nevertheless, parties in major international commercial disputes often avoid German courts and rather take their cases to trial in London and other international dispute resolution hubs. This is due to diverse reasons such as, for instance, the increased use of arbitration and the dominance of English as business and legal language. Other reasons may be Germany's federal structure, the deficiencies in the digitization and infrastructure of German courts, or their tendency to closely scrutinize general terms and conditions also in b2b relations.

At the same time, there has been an international trend, particularly widespread in Asia, to market the national legal system and one's own legal services sector across borders. With Brexit, this trend has also developed a considerable dynamism within Europe. Following the example of the eponymous London Commercial Court, new tribunals have been created or announced to vie for pole position in the settlement of international commercial disputes, such as in Paris (International Chamber of the Paris Court of Appeal, since 2018), Amsterdam (Netherlands Commercial Court, since 2019), Brussels (Brussels International Business Court, from 2020), and Zurich (Zurich International Commercial Court, expected from 2021).

### Commercial Court in Stuttgart und Mannheim

In order to compete in this international competition, Baden-Württemberg has now established Germany's first "Commercial Court". The court is subdivided into the "Stuttgart Commercial Court" and the "Mannheim Commercial Court" and took up its duties on 1 November 2020.

The Commercial Court aims at large and complex commercial disputes with international reference. For this purpose, new civil chambers and commercial divisions were created at the regional courts of Stuttgart and Mannheim. The Commercial Court's civil chambers, which decide with three professional judges, have jurisdiction in particular regarding corporate disputes, post-M&A disputes and disputes concerning commercial transactions with a value of at least EUR 2 million. The parties can alternatively choose to entrust their dispute to a commercial division of the Commercial Court, which decides with one professional judge and two commercially experienced lay judges and which is competent for commercial matters.<sup>3</sup>

Oral hearings before the Commercial Court can be conducted in English. German procedural law provides the possibility to omit the use of an interpreter if all parties involved understand the foreign language.<sup>4</sup> Furthermore, the parties can submit accompanying documents in the

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<sup>3</sup> See Sections 95 *et seq.* of the German Courts Constitution Act ("GVG").

<sup>4</sup> See Section 185 (2) GVG.

English language to the Commercial Court without the need to provide translations into German. However, for the time being, German procedural law does not yet allow to switch to English completely and the parties' written pleadings as well as the court's orders, minutes and judgments must continue to be written in German.

### **Effective proceedings, modern facilities and low costs**

Other core aspects of the Commercial Court include the use of modern facilities and the application of efficient case management techniques. The State of Baden-Württemberg has created a new court hearing centre close to the Stuttgart airport, has staffed the newly created chambers with experienced judges who are fluent in English and have special expertise in commercial law. The Commercial Court intends to hold case management conferences or preliminary discussions with the parties, for instance via video-conference, in order to structure the proceedings at an early stage. With this, Baden-Württemberg is moving ahead with the modernization of civil proceedings and is already partially implementing steps that are currently only discussed as possible innovations among court presidents in Germany.

The establishment of the Commercial Court at the first instance is accompanied by the installation of appeal senates at the respective Higher Regional Courts in Stuttgart and Karlsruhe, which will decide on appeals and complaints of the Commercial Court by applying the same innovations as the Commercial Court. The judiciary in Baden-Württemberg thus offers parties a complete package for the administration of their commercial disputes.

The attractiveness of the Commercial Court is further increased by the low cost risk. When litigating before the Commercial Court, the parties are not charged with any additional costs. The parties only have to cover the general court fees, which are relatively low in Germany and to be borne by the losing party. The recovery of counsel fees is restricted to the statutory rates which considerably limit a party's exposure to excessive cost claims of the other party.

### **Conclusion**

With the creation of the first Commercial Court in Germany, Baden-Württemberg takes an important step towards strengthening Germany as a judicial venue. Not only Brexit but also the Covid-19 pandemic have increased the pressure to modernize and internationalize domestic court proceedings. The Commercial Court now established in Stuttgart and Mannheim has accepted the challenge and offers a good alternative to other venues or arbitration proceedings. The Commercial Court's combination of experienced and English-speaking judges with efficient and modern case management tools is consistent and necessary. International and domestic parties alike should be mindful of this alternative when negotiating their dispute resolution clauses or when considering to start a new litigation.

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Seated in Stuttgart and with a team of highly reputed and experienced dispute resolution lawyers, HAVER & MAILÄNDER is ready to litigate in front of the new German Commercial Court.



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