



Schlun & Elseven
Rechtsanwälte

Cross-Border Disputes in Germany

Jurisdiction | Interim Relief |
Enforcement of Foreign Judgments

A practical guide for foreign law firms, in-house
counsel and international companies

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INTRODUCTION

Who Should Read This Guide?

Foreign law firms, in-house counsel and international companies involved in disputes with German parties, German assets or German court proceedings.

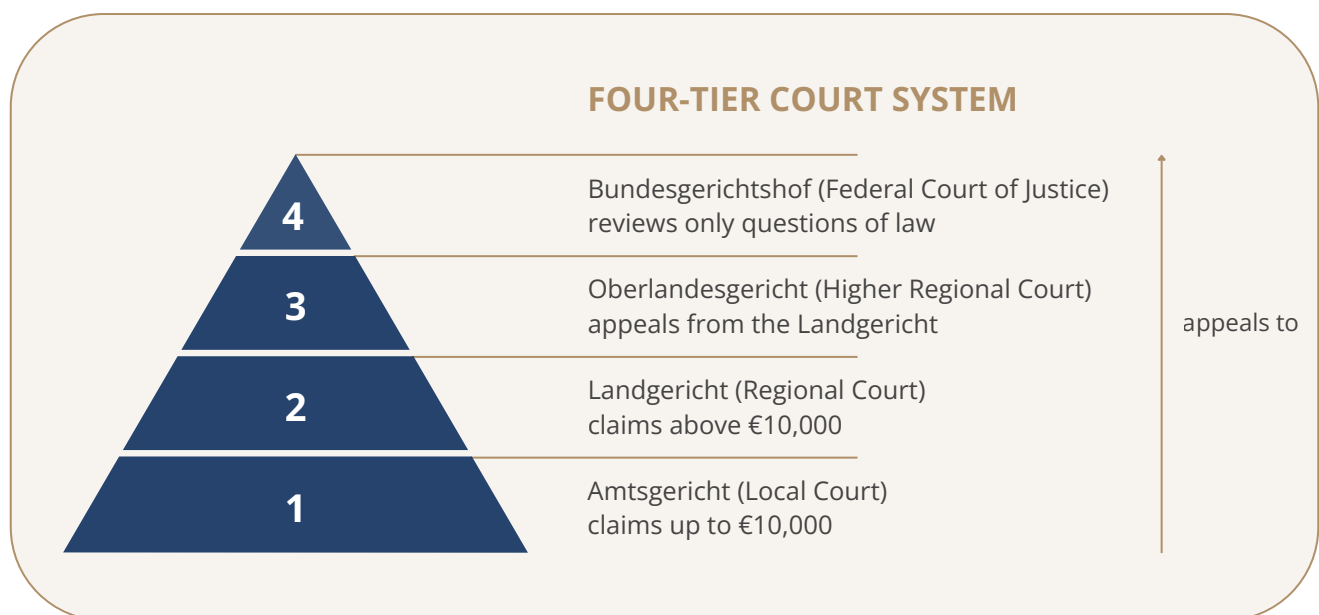
Key situations covered

- ✓ Claim against a German company
- ✓ Enforcement against German assets
- ✓ Interim relief in Germany
- ✓ Working with German local counsel

1. The German Civil Court System

Civil disputes in Germany are heard by a four-tier court system. The Amtsgericht (Local Court) has first-instance jurisdiction over lower-value disputes - those with a Streitwert (value in dispute) of up to €10,000. The Landgericht (Regional Court) is the first-instance court for higher-value claims and the appellate court for Amtsgericht decisions. The Landgericht includes specialist commercial chambers - Kammern für Handelssachen - where a professional judge sits alongside two honorary commercial judges drawn from the business community. The Oberlandesgericht (Higher Regional Court) hears appeals from the Landgericht. At the apex sits the Bundesgerichtshof (Federal Court of Justice), Germany's supreme civil court, which reviews only questions of law rather than the underlying facts.

One feature that distinguishes German civil procedure from common law systems is the active role of the judge. German judges take an engaged role in identifying issues, directing the taking of evidence, and actively encouraging settlement. German judges are career professionals, trained and appointed independently of the practicing legal profession.



2. Jurisdiction – Domestic and Cross-Border

Determining the correct court involves two distinct questions: subject-matter jurisdiction (sachliche Zuständigkeit) and local jurisdiction (örtliche Zuständigkeit).

Subject-matter jurisdiction turns primarily on the Streitwert: claims up to €10,000 go to the Amtsgericht; claims above that threshold go to the Landgericht. The Streitwert also drives costs - both court fees under the Gerichtskostengesetz (GKG - Court Fees Act) and lawyer fees under the Rechtsanwaltsvergütungsgesetz (RVG - Lawyers' Remuneration Act) are calculated on this basis. Getting it right at the outset matters both for court selection and for cost planning.

Local jurisdiction is determined as a default by the defendant's place of residence or, for companies, their registered seat (Section 12 ZPO). Special rules apply: contract disputes may be brought before the court at the place of performance; tort claims may be brought where the harmful act occurred. Parties to commercial agreements may also designate a particular court by way of a Gerichtsstandsvereinbarung (choice of court clause).

Domestic Jurisdiction	
Subject-matter Jurisdiction	Claims up to €10,000: Amtsgericht Claims above €10,000: Landgericht
Local Jurisdiction	Defendant's place of residence or the registered seat for companies

For international disputes involving parties within the European Union, jurisdiction is governed by Regulation (EU) No 1215/2012 - the Brussels Ibis Regulation (EuGVVO). This provides a detailed framework allocating jurisdiction among EU member states on the basis of the defendant's domicile, the place of performance of a contractual obligation, or the place where a harmful event occurred, among other grounds.

For parties based outside the EU, jurisdiction is determined under the ZPO and any applicable bilateral or multilateral agreements. German courts may assert jurisdiction, for instance, where the defendant holds assets in Germany or where a contractual obligation was to be performed there.

Cross-border Jurisdiction	
Within the EU	Regulation (EU) No 1215/2012 - the Brussels Ibis Regulation (EuGVVO)
Outside the EU	ZPO and applicable bilateral or multilateral agreements

It is worth noting that one of the grounds under Section 328 ZPO for refusing to recognize a foreign judgment in Germany is that the foreign court's jurisdiction would not have been recognized under German law. Jurisdiction questions therefore carry implications not only at the start of proceedings but also at the enforcement stage.

3. Mandatory Representation – The Role of Local Counsel

Under Section 78(1) ZPO, parties appearing before the Landgericht, Oberlandesgericht, and Bundesgerichtshof must be represented by a qualified and admitted German lawyer - a Rechtsanwalt. This requirement is known as Anwaltszwang. Before the Bundesgerichtshof, the requirement is stricter still: only lawyers specifically admitted to the BGH may appear.

For international parties in particular, local counsel is a practical necessity regardless of the value threshold. All proceedings are conducted in German; foreign-language documents require certified translations; and a foreign lawyer cannot stand in for an admitted German Rechtsanwalt in German civil proceedings. International clients and foreign lead counsel should identify and engage German local counsel at the earliest possible stage.

4. Service of Proceedings on Foreign Defendants

Formal service - *Zustellung* - is the procedural step by which the claim is officially delivered to the defendant, triggering the deadlines that govern the right to respond.

Germany does not have a tradition of private process servers. Domestic service is court-initiated and typically effected by post. Where the defendant is based outside Germany, service is governed by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, to which Germany is a party. There is no single national Central Authority: each of Germany's 16 federal states (*Bundesländer*) operates its own Central Authority. Documents must be accompanied by a certified German translation. Germany does not favor direct postal service under Article 10 of the Hague Convention, and routing through the correct *Bundesland* authority is the reliable approach.

Within the EU, service between member states is governed by the EU Service Regulation, which provides a more streamlined framework. Where the defendant is based abroad, their deadline to indicate intent to defend is extended to four weeks from the date of service.

5. Evidence in German Civil Proceedings

The *Zivilprozessordnung* (ZPO - German Code of Civil Procedure) sets out the categories of evidence - *Beweismittel* - available in German civil proceedings.

Documentary evidence (*Urkunden*) is the most widely used category: contracts, correspondence, invoices, account statements, and similar materials are frequently decisive. Witness testimony (*Zeugen*) is given orally before the court. Expert witnesses (*Sachverständige*) play an important role where specialist knowledge is required - technical, financial, or medical. Crucially, under Section 402 ZPO, the expert is a court-appointed neutral, not a party-commissioned expert in the common law sense. The court proposes the expert; the parties may agree or raise objections. The expert's written report informs but does not bind the court.

The active judicial role in directing evidence is a significant practical difference from common law systems. Judges identify and shape the evidentiary inquiry; evidence is not solely presented by opposing counsel.

IMPORTANT NOTE

For international parties bringing or defending proceedings in Germany, early attention to document preservation, certified translation of key materials, and the identification of potential witnesses is strongly advisable.

6. Interim Relief – Injunctions and Asset Freezes

German law provides effective interim relief mechanisms for parties who need to act quickly before a final judgment is obtained.

The main instruments are the einstweilige Verfügung (preliminary injunction) and the Arrestbefehl (asset freezing order). A preliminary injunction may be obtained to prohibit a defendant from taking a specific action - for instance, infringing intellectual property, breaching a confidentiality obligation, or misappropriating business assets. An Arrestbefehl is designed to secure a monetary claim by freezing the defendant's assets pending judgment, preventing dissipation before enforcement becomes possible.

Both measures are available on an urgent basis and can in appropriate cases be obtained without prior notice to the opposing party (ex parte). The applicant must demonstrate both a substantive right (Verfügungsanspruch or Arrestanspruch) and urgency (Verfügungsgrund or Arrestgrund). If granted, the defendant has the right to apply to set the order aside. The Landgericht has jurisdiction over interim relief applications in most commercial disputes.

For foreign parties concerned about asset dissipation by a German counterparty, these mechanisms offer a practical route to securing the position before judgment.

7. Enforcement of Foreign Judgments in Germany

Where a party holds a foreign court judgment and seeks to enforce it against a defendant or assets in Germany, the applicable framework depends on where the judgment was issued.

Decision	Treatment in Germany
EU judgment	Recognized without special procedure
Non-EU judgment	Recognition under Section 328 ZPO
Arbitral award	New York Convention framework

EU JUDGMENTS: Under Article 36 of the Brussels Ibis Regulation, a judgment issued in one EU member state is recognized in all other member states without any special procedure. The judgment creditor needs a certified copy and, where necessary, a certified translation.

NON-EU JUDGMENTS: Recognition and enforcement are governed by Section 328 ZPO. A German court will refuse to recognize a foreign judgment if:

- The foreign court lacked jurisdiction under German law
- The defendant was not properly served in sufficient time to mount a defense
- The foreign judgment conflicts with a German judgment or with earlier foreign proceedings pending in Germany
- Recognition would produce a result manifestly incompatible with fundamental principles of German law, including fundamental rights
- Reciprocity has not been granted

Where no bilateral recognition arrangement exists - as is the case with the United States, China, and Turkey in many areas - a separate exequatur procedure must be brought before a German court before the foreign judgment can be enforced. A German court will assess whether the original proceedings were conducted in accordance with principles of procedural fairness and whether the resulting judgment conflicts with German public policy.

ARBITRAL AWARDS: Germany is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates enforcement in over 170 contracting states. Enforcement of arbitral awards is generally more straightforward than enforcement of foreign court judgments.

8. Enforcement Measures Under German Law

Once a judgment becomes enforceable, the judgment creditor may initiate *Zwangsvollstreckung* - compulsory enforcement proceedings - after obtaining a certificate of enforceability (*Vollstreckungsklausel*). The main enforcement tools available are:

- 01 Kontopfändung (bank account garnishment)**
A court order freezes the debtor's bank account and transfers funds to a court-supervised escrow. The debtor retains a protected minimum for basic living costs.
- 02 Lohnpfändung (wage garnishment)**
A court order served on the debtor's employer requires a portion of wages to be withheld until the debt is discharged.
- 03 Zwangsversteigerung (forced sale of real estate)**
The court authorizes seizure and forced auction of real property, with proceeds applied to the debt.
- 04 Enforcement against intangible assets**
Intellectual property rights, claims against third parties, and other non-physical assets may be subject to enforcement through assignment, licensing arrangements, or injunctions.

German enforcement law applies the principle of proportionality (Verhältnismäßigkeit) throughout. Certain assets are protected: the minimum bank balance necessary for basic living, tools and equipment needed for the debtor's professional activities, and essential household goods. Secured creditors hold priority over unsecured creditors.

9. Cooperation Between Foreign Lead Counsel and German Local Counsel

In cross-border disputes involving German parties or assets, the effective division of roles between foreign lead counsel and German local counsel is an important practical consideration.

German local counsel is responsible for all filings before the German courts, procedural compliance with ZPO requirements, service coordination, and representation at hearings. The Anwaltszwang requirement means that German local counsel cannot be bypassed at the Landgericht and above. German lawyers also bring knowledge of local court practices, judicial culture, and the particularities of local enforcement - which vary across Germany's 16 federal states.

Foreign lead counsel typically retains strategic oversight of the client relationship, the overall litigation strategy, and coordination with proceedings in other jurisdictions. A well-functioning cooperation will establish clear lines of communication and responsibility from the outset, ensure that procedural deadlines in Germany are monitored jointly, and address the certified translation of key documents before they become urgent.

PRACTICAL POINT

At Schlun & Elseven Rechtsanwälte, we work regularly with foreign law firms and their international clients as German local counsel. Our team provides comprehensive representation in civil disputes before German courts at every level, advises on interim relief, assists with recognition and enforcement proceedings, and coordinates on cross-border matters involving parallel proceedings in multiple jurisdictions.

10. Key Takeaways

- ✓ German civil procedure is governed by the ZPO and is structured around an actively managed judicial process, which differs in important ways from common law litigation.

- ✓ Jurisdiction in international disputes is determined by the Brussels Ibis Regulation for EU parties and by the ZPO and applicable treaties for non-EU parties - with implications that extend to the enforcement stage.

- ✓ Mandatory representation by a qualified German lawyer applies before the Landgericht and above. Foreign parties should engage German local counsel early.

- ✓ Service of proceedings on foreign defendants follows the Hague Service Convention, with Germany's 16 federal states each operating their own Central Authority.

- ✓ Effective interim relief mechanisms - including preliminary injunctions and asset freezing orders - are available on an urgent basis, including ex parte in appropriate cases.

- ✓ EU judgments are directly enforceable in Germany under the Brussels Ibis Regulation. Non-EU judgments are subject to the recognition criteria of Section 328 ZPO, and an exequatur procedure may be required.

- ✓ German enforcement law provides a range of tools including bank account garnishment, wage garnishment, and forced sale of real estate, subject to proportionality protections.

- ✓ Clear cooperation between foreign lead counsel and German local counsel from the outset is key to effective management of cross-border disputes involving Germany.

WHEN TO INVOLVE GERMAN COUNSEL

- ✓ German defendant or German assets
- ✓ Urgent injunction or asset freeze
- ✓ Service or evidence in Germany
- ✓ Foreign judgment to enforce in Germany

Litigation Practice Group



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