Law Council OF AUSTRALIA

FACT SHEET PRACTISE OF FOREIGN LAW

Germany



What is the basis of law in Germany?

The legal system in Germany is based on the civil law tradition. The majority of law in Germany is codified. However, there is some continuing (but fading) influence of customary law. Germany is one of 28 member states of the European Union (EU) and is therefore subject to EU legislation.

The German court structure comprises:

- Ordinary courts (Local Courts, Regional Courts, Higher Regional Courts, Federal Court of Justice);
- Administrative courts (Administrative Court, Higher Administrative Court, Federal Administrative Court);
- Finance/Tax courts (Finance Court, Federal Finance Court); and
- Social courts (Social Court, Higher Social Court, Federal Social Court).

A lawyer in Germany is known as a *Rechtsänwalt.*

How is the legal profession regulated?

The legislation which governs the legal profession in Germany is the *Federal Lawyers' Act* ("*Bundesrechtsanwaltsordnung*", BRAO) and the *Legal Services Act* vom 12.12.2007 ("*Rechtsdienstleistungsgesetz*", (RDG)).

Lawyers are also subject to the *Lawyers Professional Code of Conduct* (*Berufsordnung der Rechtsanwälte*).

What is the professional representative body or bodies? Which body is responsible for professional regulation?

The *Bundesrechtsanwaltskammer* (BRAK) is the federal regulatory organisation for the profession. However, in practice, regulation is provided by 28 *Rechtsanwaltskammern* (bar associations) - 27 regional and one attached to the Federal Court of Justice. Membership to a bar association is a condition of admission to practice for German lawyers.

In addition to the regulatory bodies, the Deutscher Anwaltverein (DAV) is the voluntary representative body for German lawyers.

What rules govern fly-in/fly-out practice?

The provision of temporary services by a non-EU lawyer under his/her home title is **not** permitted in Germany.

What rules govern foreign legal consultants?

Foreign lawyers may be granted a licence to practise home country or international law in Germany. This option is only available to lawyers from a state which is a signatory to the General Agreement on Trade in Services (GATS). The local bars are responsible for granting such licences.

Membership of a local bar requires education/qualification in a foreign country comparable to that which a German lawyer receives in Germany. The Australian professions of solicitor, barrister and legal practitioner have been approved by the Federal Ministry of Justice, under Section 206 of the BRAO, as meeting this requirement.

What rules govern foreign lawyer admissions?

Non-European Economic Area (EEA) lawyers must undertake the full national process of qualification in Germany in order to practice in German law.

What forms of commercial associations are permitted between foreign and local lawyers and law practices?

Foreign (non-EU) lawyers may establish as sole practitioners or partnerships with the authorisation of the relevant local Bar Association. The scope of practice for such commercial associations is limited to the practice of international law and relevant foreign law.

Further Information

German Federal Bar Association (BRAK)

German Bar Association (DAV)

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