

## English language in German court proceedings

Germany has made great strides over the past few years in offering competitive corporate legal structures, but it still has a ways to go before it can compete internationally as a legal forum. First and foremost, certain procedural rules must be adapted to changed communication practices in the modern business world.

### The German language barrier

As regrettable as this may be from the German perspective, globalisation heralds the waning importance of the German language in comparison to English as the "lingua franca" of the world. English has almost without exception become the international language of negotiation and contracting for most major transactions, regardless of whether any anglo-american parties are involved. These days, the younger generation of German attorneys at commercial law firms and even in-house corporate counsel speak nearly perfect English, be it thanks to extended stays or studies abroad in English-speaking countries or as a result of years of experience negotiating and drafting contracts and other documentation in English. Yet when it comes to litigating disputes in connection with such documentation, parties are often reluctant to contractually stipulate Germany as the forum for resolving them. Their concern is that the requirement of translating all the relevant pleadings and supporting documentation into German and retaining court interpreters for witness testimony will make settling the dispute significantly more complicated and costly. This, coupled with the uncertainty associated with the ability of German judges to understand from the translations the nuances of the English language, often causes parties to opt for arbitration instead or to select e.g. English or US law and a foreign venue as the legal forum right from the outset, regardless of the fact that, in many cases, litigating in Germany would be the cheaper and faster alternative.

### Accepting the English language for litigation before special German court divisions

Globalisation has left its mark on the judiciary as well. For some time now Germany has had special court divisions, e.g. for patent cases, where judges are completely capable of assessing and adjudicating English-language documents without any additional German translations and hearing witnesses without the aid of interpreters. These judges have an excellent command of English because they had once practiced at international law firms or were educated abroad. Only the court's judgements and orders themselves are still required to be in German.

From this starting point, Germany is now preparing to take a quantum leap: Some German states like North Rhine Westphalia and Hamburg have started an initiative to amend the German Judiciary Act (*Gerichtsverfassungsgesetz*) and certain provisions of the German Code of Civil Procedure (*Zivilprozessordnung*) to provide for the creation of special "court divisions for international commercial matters" where the parties may elect to have English be the official language of the proceedings instead of German. Litigation before such court divisions will be conducted solely in English, i.e. all pleadings and supporting documentation may be submitted in English and even the judgement itself will be rendered in English. A German translation of the judgement along with the English original would be required only for purposes of enforcement. These special statutory rules for "court divisions for international commercial matters" would apply for all phases of litigation, from the trial level all the way to final appeal if the parties so elect. Of course, under the initiative proposed by

the states of North Rhine Westphalia and Hamburg, German courts may at any time during the course of the proceedings order that they be continued in German and that interpreters be used, if they believe this to be necessary in the interests of a fair trial and affording each party equal access to due process under the law.

## **Outlook**

If this legislative initiative is indeed adopted, Germany, with key venues such as Düsseldorf, Frankfurt, Hamburg or Stuttgart, will be competitive to international venues such as London or Paris by providing a court system (i) structured to settle even complex litigation quickly and efficiently (ii) at significantly lower attorney and court fees in comparison to that of common law litigation and (iii) with the added option of conducting the proceedings in English, i.e., in the language of contracting, thus ensuring optimum transparency. In some cases, this would make litigating in Germany even more attractive than the arbitration-only option, which parties can also elect to be conducted in English. The new legislation could - as with patent disputes - make Germany a significant forum for major, high-profile cross-border disputes, granting German courts and their rulings a new measure of respect even in comparison to their international counterparts.

While it remains to be seen how quickly the German Government and Parliament will adopt this initiative, it bodes well that prominent supporters from the judiciary, the bar and the legislature are all on board and headed in the same direction.