

# § 14 Important fields regulated in special legislation

## I. Commercial law [Handelsrecht]

- special private law on the *relationships between merchants* (business people) [Kaufleute]
  - merchants are those who carry a commercial business that requires a commercially organised business operation
  - commercial law also applies to commercial companies and partnerships
- regulated in the Commercial Code [Handelsgesetzbuch] of 1897, which entered into force in 1900, together with the German Civil Code, and some complementary laws
- takes into account that merchants need less protection but greater freedom to contract with each other in their business life
- strongly influenced by special jurisprudence and international treaties; special consideration of the prevailing *commercial customs and usages* (cf. sect. 346 Commercial Code)
- transparency, as necessary in the economic process, is provided by the
  - Commercial Register of merchants [Handelsregister], operated by the local district courts
  - Company Register [Unternehmensregister] with more comprehensive information, operated by the Federal Ministry of Justice (sect. 8, 8b Commercial Code)

## II. Corporate law (company law) [Gesellschaftsrecht]

- note that company law is very different in the individual EU member states and differs strongly from that in common law countries!

### 1) Capital based corporations [Kapitalgesellschaften]

- membership based purely on monetary participation; pay own taxes (see supra, § 4.I.2)
- a) **Limited liability company** [Gesellschaft mit beschränkter Haftung (GmbH)]
  - regulated in the Act on Limited Liability Companies
  - tendencies to limit the limitation of liability in case of abuse (→ lifting the corporate veil)
- b) **Stock corporation** [Aktiengesellschaft (AG)]
  - regulated in the Stock Corporation Act
  - see also Societas Europaea (SE), a special form of stock corporation under EU law
- c) **Special type: Partnership limited by shares** [Kommanditgesellschaft auf Aktien]
  - a combination of limited and unlimited liability (→ sect. 278 et seq. Stock Corporation Act)

### 2) Personal partnerships with partial legal capacity [Personengesellschaften]

- act through their partners, who are fully liable (see supra, § 4.I.3)
- a) **Civil-law partnership** [Gesellschaft des bürgerlichen Rechts (GbR)] (sect. 705 et seq. BGB)
  - with or without legal capacity
- b) **General partnership** [Offene Handelsgesellschaft (OHG)] (sect. 105 et seq. Comm. Code)
  - no partner's liability is limited vis-à-vis creditors
- c) **Partly limited partnership** [Kommanditgesellschaft (KG)] (sect. 161 et seq. Comm. Code)
  - liability of some partners is limited to the amount of a specific contribution of assets
  - special type: **GmbH & Co KG** (with a limited liability company as fully liable partner)
- d) **Partnership company of free-lancers** [Partnerschaftsgesellschaft] (Act on Partnership Companies)

### III. Labour law [Arbeitsrecht]

- combines elements of private law and public law
- structured into individual labour law and collective labour law
- important special legislation (selection):
  - Employment Protection Act [Kündigungsschutzgesetz]
  - Occupational Safety and Health Act [Arbeitsschutzgesetz]
  - Working Hours Act [Arbeitszeitgesetz]
  - Posted Employees Act [Arbeitnehmer-Entsendegesetz]  
(on mandatory working conditions for foreign employees posted in Germany)
  - Collective Agreements Act [Tarifvertragsgesetz]
  - Works Constitution Act [Betriebsverfassungsgesetz]  
(on employees' participation in company management via an elected Works Council [Betriebsrat])
  - Co-determination Act [Mitbestimmungsgesetz]  
(on employees' participation in the management of large companies via elected representatives in the Board)

### IV. Civil procedural law [Zivilprozessrecht]

- the law on the court proceedings in private law before the ordinary courts
  - district courts [Amtsgerichte]
  - regional courts [Landgerichte]
  - higher regional courts [Oberlandesgerichte]
  - Federal Court [Bundesgerichtshof] (the supreme court in private law matters)
- includes the law on the *compulsory enforcement* (foreclosure) [Zwangsvollstreckung]
- regulated mainly in the Code of Civil Procedure [Zivilprozessordnung]
- procedural maxims:
  - principle of party disposition [Dispositionsmaxime]
    - parties shall determine initiation, subject matter and end of the proceedings
  - principle of production of evidence by the parties [Beibringungsgrundsatz]
    - it is for the parties to adduce evidence of the facts of the case
  - principle of orality [Mündlichkeitsgrundsatz]
    - judgment may only take into account what is presented at the oral hearing (which may, however, refer to documents)
  - principle of immediacy [Unmittelbarkeitsgrundsatz]
    - oral hearing & taking of evidence before the deciding court
  - principle of public trial [Öffentlichkeitsgrundsatz]
  - right to be heard before the courts (sect. 103(1) BL)
  - principle of trying to concentrate the proceedings in one oral hearing [Konzentrationsgrundsatz]
  - right to a fair trial

### V. Private international law (law of conflicts) [Internationales Privatrecht]

- regulated in sect. 3 et seq. of the Introductory Act to the Civil Code
- the law that regulates which national law is to be applied in an individual case with an international connection
- usually limited to regulate the conflict of laws but not containing itself substantive rules
- nowadays *widely replaced by European regulations*, in particular
  - Rome I Regulation (Regulation 593/2008 on the law applicable to contractual obligations)
  - Rome II Regulation (Regulation 864/2007 on the law applicable to non-contractual obligations)
  - Rome III Regulation (Regulation 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation)
  - and others in the field of family law and law of succession
- ordre public proviso: foreign legal norms are not applied where this would lead to a result manifestly incompatible with fundamental principles of German law (e.g. fundamental rights) (sect. 6)