

Summary Table of Contents

Preface	V
Table of Important Abbreviations	XXIII

Part 1: Introduction to Commercial Dispute Resolution in Germany

Chapter 1: Commercial Litigation	1
A. Some Distinct Features of Litigation in German Courts	1
B. Basic Elements of the German Civil Justice System	2
C. The Court System	12
D. Jurisdiction	15
E. Pleading in German Litigation	22
F. Fact-Finding prior to Commencing Action	26
G. Preparing and Securing Evidence	35
H. Strategy Considerations	38
I. Commencing the Action	51
J. Court Order and Service of Process	54
K. Possible Responses by Defendant	59
L. Third-Party Intervention	62
M. Further Actions by Plaintiff	63
N. Joint Actions by the Parties	65
O. Additional Court Orders	67
P. Interruption of Proceedings	69
Q. The Oral Hearing	69
R. Evidentiary Proceedings	72
S. Establishing the Law	87
T. Judgments	89
U. Appellate Remedies	93
V. Enforcement and Execution of German Judgments	103
W. Provisional Relief	111
X. Legal Assistance in Aid of Foreign Proceedings	118

Chapter 2: Arbitration	125
A. Introduction	125
B. The Arbitration Agreement	128
C. Constitution and Composition of the Arbitral Tribunal	136
D. The Arbitrator's Contract	143
E. Jurisdiction of Arbitral Tribunal	148
F. The Arbitral Proceedings	149
G. Making of Award and Termination of Proceedings	164
H. Recourse against Award	179
I. Recognition and Enforcement of Arbitral Awards	187
Chapter 3: Mediation	191
A. Introduction to Mediation in German Commercial Disputes	191
B. International Regulatory Developments	193
C. Statutory Framework of Mediation in Germany	194
D. Mediation Clauses and Agreements	198
E. Mediation and Court Proceedings	199
F. Mediation Procedure	200
G. Conclusion of Mediation Proceedings	206
 Part 2: Relevant Statutory and Regulatory Materials	
A. German Statutory Instruments	211
B. EC Regulations	318
C. Bilateral and Multilateral Treaties	395
D. German Institutions and Rules for Arbitration	426
E. German Institutions and Rules for Mediation	446
Appendix 1 Selected Sample Calculations of Fees in German Proceedings	453
Appendix 2 Bibliography	461
Appendix 3 German-English Glossary	467

Table of Contents

Preface	V
Table of Important Abbreviations	XXIII
 Part 1: Introduction to Commercial Dispute Resolution in Germany	
Chapter 1: Commercial Litigation	1
A. Some Distinct Features of Litigation in German Courts	1
B. Basic Elements of the German Civil Justice System	2
I. The German Civil Law System	2
II. Sources of Civil Procedure Law	3
1. Constitutional Law	3
2. Statutes	3
a) Core Statutes	3
b) Major Reforms	4
3. European Legislation and International Treaties	4
III. General Principles of Civil Procedure Law	6
IV. The Actors in German Litigation	6
1. The Parties	6
2. The Lawyers	7
a) Education and Training	7
b) Judges	7
c) German Attorneys	8
d) Foreign Attorneys	8
3. Court Officers	8
V. Efficiency of the System	9
1. Duration of Proceedings	9
2. Litigation Costs	9
a) Court Costs	9
b) Attorney Fees	10
aa) Statutory Fees	10
bb) Negotiated Fees	10
c) Reimbursement of Costs	11
d) Examples	11
C. The Court System	12
I. Jurisdictional Branches	12
II. The Civil Courts	12
1. Entry-Level Courts	12
a) Local Courts	12
b) Regional Courts	12
2. First Appellate Level (<i>Berufung</i>)	13
a) Regional Courts	13

b) Higher Regional Courts	13
3. Second Appellate Level (<i>Revision</i>)	13
III. Extraordinary Appeals	14
1. Federal Constitutional Court	14
2. European Court of Justice	14
3. European Court of Human Rights	14
D. Jurisdiction	15
I. Overview: Jurisdiction, Applicable Law, Sovereign Immunity	15
1. Jurisdiction	15
2. Applicable Procedural Law	15
3. Sovereign Immunity	15
II. Proper Jurisdictional Branch	16
III. Exclusive Jurisdiction	16
IV. Agreement on Jurisdiction	17
V. Jurisdiction by Failure to Raise an Objection	17
VI. General and/or Special Jurisdiction	18
1. General Jurisdiction	18
2. Special Jurisdiction	18
3. In Particular: Long-Arm Jurisdiction	18
VII. Multiple Jurisdiction and Lack of Jurisdiction	19
VIII. Jurisdiction Determined by a Superior Court	19
IX. Forum Shopping and <i>Lis Pendens</i>	20
X. Challenges to Jurisdiction	21
1. Forum Non Conveniens	21
2. Anti-Suit Injunctions	21
XI. Reference to a Valid Arbitration Agreement	22
E. Pleading in German Litigation	22
I. The Method of “Comparative Analysis”	22
II. Submissions and Pleading	23
1. Principle of Oral Procedure and the Differing Practice	23
2. Number and Timeliness of Submissions	24
3. Contents of Submissions	24
a) Statement of Facts	24
b) Specifying Evidence	25
c) Pleading the Law	25
4. Length and Style of Submissions	25
F. Fact-Finding prior to Commencing Action	26
I. General	26
II. Exploring the Information Available to the Party	26
1. Review of Documents, Physical Inspections and Interviews ...	26
2. Use of Commercial Information Providers	27
3. Use of Outside Experts	27
4. Public Registers	27
a) Registers to Determine Domicile	27
b) Company Registers	28
c) Debtors’ Register	28
d) Land, Ship, Aircraft and Matrimonial Property Registers ..	29
III. Using Inspection Rights for Files kept at Public Authorities	29
1. Files at Regulatory Authorities	29

a) Information Rights under Federal and State Freedom of Information Acts	29
b) Information Rights under General Administrative Law	30
2. Files in the Criminal Justice System	30
a) Inspection Rights	30
b) Reporting Alleged Crimes	31
3. Files at the Civil Courts	31
4. Files at Other Courts	32
5. Requests for Information and for Forwarding of Files	32
6. Blocking Inspection Rights	33
IV. (Expedited) Court Procedures for Obtaining Information	33
1. Court Proceedings for Information	33
2. Expedited Court Procedures for Information in Company Law	33
V. Disclosure Proceedings Abroad	34
G. Preparing and Securing Evidence	35
I. Preparing Evidence	35
1. Means of Evidence	35
2. Preparing Documents and Objects for Inspection	35
3. Preparing Expert Testimony	36
4. Preparing Witness Testimony	36
a) Securing Potential Witnesses	36
b) Preparing Witnesses	37
II. Independent Procedure for the Taking of Evidence	37
H. Strategy Considerations	38
I. Selection of Forum	38
II. Selecting the Right Parties	39
1. Plaintiff	39
a) Assignment of Claim	39
b) Joinder of Multiple Plaintiffs	39
2. Multiple Defendants	40
a) Joinder	40
b) Increased Cost Risk	41
3. Third-Party Notice	41
4. Class or Group Actions	42
a) Registered Interest Group Acting as Plaintiffs	42
b) Common Representative Acting as Plaintiff	42
c) Capital Markets Model Case Act	42
III. Timing Issues	44
1. General	44
2. Limitation Period	44
IV. Choice of Procedure	45
1. Collection Proceedings	45
a) Collection Proceedings under German Law	45
b) European Collection Proceedings for Uncontested Claims ..	46
c) Collection proceedings by an European Order for Payment ..	46
d) European Proceedings for Small Claims	47
2. Summary Proceedings Based on Documentary Evidence or a Bill of Exchange	47
3. Action by Stages	48

4. Ancillary Procedures	48
V. Reducing Cost Risks	49
1. Action for a Partial Claim Only	49
2. Legal Aid	50
3. Legal Cost Insurance	50
4. D&O and other Business-Related Types of Insurance	51
5. Litigation Financing	51
I. Commencing the Action	51
I. Filing the Statement of Claim	51
1. Contents of the Statement of Claim	52
a) Specifying the Court and the Parties	52
b) Specifying the Relief Sought	52
aa) Types of Relief Available	52
bb) Motion for Relief	52
c) Statement of Value of the Matter and Signature	53
2. Exhibits to the Statement of Claim	53
a) Interdependencies between the Statement of Claim and its Exhibits	53
b) Foreign-Language Exhibits	53
II. Prepayment of Court Costs	53
J. Court Order and Service of Process	54
I. The Role of the Court	54
1. Structuring the Proceedings by Court Orders	54
2. Duty to Give Indications and Feedback	54
II. Initial Court Order on Further Proceedings	55
III. Service of Process	55
1. Initial Service of Statement of Claim	55
a) Domestic Service	56
b) Service Abroad	56
c) Service by Public Notice	57
d) Defects of Service	58
e) Effects of Service	58
2. Subsequent Service	58
K. Possible Responses by Defendant	59
I. Defending Against the Action	59
1. Statement of Defense	59
2. Grounds for Defense	59
a) Defense on the Merits	59
b) Defense by Set-Off	59
c) Defense and Counteraction	60
3. Motion for Security for the Costs of the Proceedings	60
II. Termination of the Action by Default	60
III. Termination of the Action by Acknowledgement of Claim	61
L. Third-Party Intervention	62
I. Main Third-Party Intervention	62
II. Auxiliary Third-Party Intervention	62
M. Further Actions by Plaintiff	63
I. Further Substantiation of Claim	63

II. Amendments and Extension of Claim	63
III. Termination by Withdrawal of Action	64
IV. Termination of Action by Waiver of Claim	64
V. Termination of Action by Declaring the Proceedings Moot	64
N. Joint Actions by the Parties	65
I. Suspension of Proceedings	65
II. Termination of Action by Settlement	65
1. Settlement in Court	65
2. Out-of-Court Settlement	66
O. Additional Court Orders	67
I. Court Orders Designed to Expedite the Proceedings	67
II. Court Orders for Joinder of Actions and for Severance	67
III. Court Order for Stay of Proceedings	67
IV. Disclosure Orders by the Court	68
1. Disclosure Orders for Production of Evidence	68
2. General Disclosure Orders	68
P. Interruption of Proceedings	69
Q. The Oral Hearing	69
I. General	69
1. Function	69
2. Record of Hearing	70
3. Publicity	70
II. Conduct of the Oral Hearing	71
1. Opening of the Hearing	71
2. Conciliation Hearing	71
a) Introduction by the Presiding Judge	71
b) Pleading and Discussion	71
c) Settlement Attempt	71
3. Main Oral Hearing	72
a) Asserting the Motions	72
b) Pleading and Discussion	72
c) Taking of Evidence	72
d) Conclusion of the Hearing	72
R. Evidentiary Proceedings	72
I. General	72
1. Scope of Taking Evidence	72
2. Evidentiary Means	73
3. Order to Take Evidence	73
II. Taking Evidence	73
1. Proof by Documentary Evidence	73
2. Proof by Inspection by the Court	74
3. Proof by Third-Party Witness Testimony	75
a) Duties of a Witness	75
b) Hearing of the Witness	75
c) Recording of the Witness Testimony	76
d) Remuneration of Witnesses	76
e) Probative Value of Witness Testimony	76
4. Proof by Expert Testimony	76

a) Appointment of an Expert	76
b) Duties of an Expert	77
c) Opinion of the Expert	77
d) Challenges to the Opinion by the Expert	77
e) Remuneration of Experts	78
f) Probative Value of Expert Testimony	78
g) Expert Witnesses	78
5. Proof by Party Testimony	78
a) Informal Hearing of a Party	78
b) Formal Party Testimony	79
6. Frustration of Taking Evidence	79
III. Privileges	79
1. Party Privilege	80
a) Privileges as to Informal Hearings and as to Serving as a Party Witness	80
b) Privilege and Disclosure Orders	80
2. Privileges for Third-Party Witnesses	80
a) Professional Privilege	80
aa) (Former) Corporate Officers	80
bb) Bank Secrecy Rules	80
cc) Professional Advisors	81
dd) In-house Counsel	81
ee) Clergy and Media	81
b) Personal Privilege	82
aa) Familial Privilege	82
bb) Privilege to Avoid Financial Harm, Disgrace, or Self-Incrimination	82
cc) Privilege to Protect Trade Secrets Owned by Third Parties	82
c) Public Servants Privilege	82
d) Invoking Privilege	83
3. Privilege for Experts	83
4. Third-Party Privileges Relating to Orders for Document Pro- duction and for Inspection	83
IV. Evidence Located Abroad	83
1. Statutory Sources	83
2. Procurement of Evidence by the Court	84
3. Requests for Legal Assistance	84
a) Brussels Evidence Regulation	84
b) Hague Evidence Convention	85
4. Direct Taking of Evidence	86
5. Foreign Privileges	86
V. Evaluation of Evidence and Standard of Proof	87
S. Establishing the Law	87
I. German Law and German Private International Law	87
II. Establishing Foreign Law	88
T. Judgments	89
I. Uncontested Judgments	89
II. Contested Judgments	89

1. Types of Judgments	89
2. Form and Contents of a Judgment	90
3. Corrections of Judgments	90
a) Apparent Mistakes	90
b) Amendments and Supplements	91
c) Practical Relevance	91
4. Service of Judgment	91
III. Effects of a Judgment	91
1. Binding Effect on the Court	91
2. Binding Effect on the Parties	91
3. Procedures for Setting Aside a Final and Binding Judgment ...	92
a) Motion for a New Trial	92
b) Action for Damages	92
U. Appellate Remedies	93
I. General	93
1. Overview: Appellate Remedies	93
2. General Features of Appellate Remedies	94
II. First Appeals	94
1. Competent Appellate Court	94
2. Admissibility of Appeal	94
a) Decisions Subject to Appeal	94
b) Aggrievement of Appellant	95
3. Waiver of Appeal	95
4. Appellate Written Pleadings	95
a) Statement of Appeal	95
b) Statement of Grounds for Appeal	95
c) Statement of Defense	95
d) Withdrawal of Appeal	96
5. Court Orders	96
a) Procedural Orders by the Court	96
b) Dismissal of Appeal by Court Order	96
6. Scope of Appellate Review	96
7. Judgment	97
III. Second Appeal	97
1. Competent Appellate Court	97
2. Admissibility of Appeal	98
a) General	98
b) Admission of Appeal and Miscellaneous Appeal against Refusal to Grant Leave to Second Appeal (<i>Nichtzulassungs-</i> <i>beschwerde</i>)	98
c) Waiver	98
3. Submissions	99
a) Statement of Second Appeal	99
b) Statement of Grounds for Second Appeal	99
c) Statement of Defense	99
4. Court Orders	99
a) General	99
b) Court Order for Dismissal	100
5. Scope of Appellate Review	100
6. Judgment	100

IV. Miscellaneous Appeals (<i>Beschwerde</i>)	101
1. General	101
2. Immediate Miscellaneous Appeal	101
a) Competent Court	101
b) Admissibility of Appeal	101
c) Submissions	101
d) Court Decision	102
3. Miscellaneous Appeal on Points of Law (<i>Rechtsbeschwerde</i>)	102
a) Competent Appellate Court	102
b) Admissibility	102
c) Submissions	102
d) Court Decision	103
V. Enforcement and Execution of German Judgments	103
I. Enforcement and Execution in Germany	103
1. General	103
2. Execution of Monetary Claims	104
a) Execution by Garnishment of Monetary Claims and Other Proprietary Interests	104
b) Execution against Tangible Personal Property	105
c) Execution against Real Property	105
aa) Options for a Creditor	105
bb) Procedure	105
d) Forced Disclosure Proceedings	106
3. Execution of Non-Monetary Claims	107
a) Delivery or Recovery of Movable	107
b) Surrendering Possession of Real Property	107
c) Performance of an Act	107
d) Refraining from or Acquiescence to an Act	107
e) Declarations of Intent	108
4. Remedies in Execution Proceedings	108
II. Enforcement Abroad	108
1. Enforcement within the European Union	109
a) Brussels Regulation 2012	109
b) Other European Enforcement Regimes	109
2. Lugano Convention 2007	110
3. Others	110
W. Provisional Relief	111
I. General	111
1. Provisional Remedies Available	111
2. Practical Aspects	111
II. Attachments	112
1. Application for an Attachment	112
a) Jurisdiction	112
b) Motions	112
c) Attachment Claim	113
d) Grounds for Attachment	113
2. Protective Writ	114
3. Attachment Judgment or Order	114
4. Execution	114

5. Remedies	115
III. Preliminary Injunction	115
1. Application for a Preliminary Injunction	115
a) Jurisdiction	116
b) Motions	116
c) Injunction Claim	116
d) Grounds for Injunction	116
2. Protective Writs	117
3. Injunction Judgment or Order	117
4. Execution	117
5. Remedies	117
IV. No-Fault Liability	117
V. Enforcement of German Provisional Decisions Abroad	118
X. Legal Assistance in Aid of Foreign Proceedings	118
I. Service of Process	118
1. Brussels Service Regulation 2007	118
2. Hague Service Convention	119
3. Other Requests	120
II. Taking of Evidence in Germany in Aid of Foreign Proceedings ...	120
1. Brussels Evidence Regulation	120
2. Hague Evidence Convention	120
3. Other International Instruments	121
III. Information on German Law	121
IV. Enforcement of Foreign Judgments	121
1. Judgments of Courts in the European Union	121
2. Other Foreign Judgments	122
V. Provisional Remedies in Aid of Foreign Proceedings	123
1. European Union	123
2. Decisions by Courts Outside the European Union	123
Chapter 2: Arbitration	125
A. Introduction	125
I. Brief History	125
1. German Arbitration Law	125
2. Legislative Intent behind New German Arbitration Law	125
3. Arbitration in Germany Today	126
II. Statutory Landscape of German Law on Arbitration	126
1. International Treaties	126
2. Scope of New Legal Regime	127
a) Place of Arbitration in Germany	127
b) Applicability to Arbitral Proceedings without German Seat	127
B. The Arbitration Agreement	128
I. Arbitrability	128
1. Subjective Arbitrability	128
2. Objective Arbitrability	129
a) Disputes Involving an Economic Interest	129
b) Disputes Not Subject to Arbitration	129
II. Content Requirement of an Arbitration Agreement	130
III. Form Requirements	131

1. "In Writing" and Signature Requirement under German Arbitration Law	131
a) Non-Consumers	132
aa) "In Writing" and Signature Requirements for Non-Consumers.	132
bb) Arbitration Agreement by Incorporation.	132
cc) Unilateral Arbitration Agreement.	132
b) Consumers	133
c) Remedying Form Defects in Arbitration Agreement	133
2. "In Writing" and Signature Requirement of the New York Convention	134
IV. Effect on Third Parties	135
V. Termination and Breach	136
C. Constitution and Composition of the Arbitral Tribunal	136
I. Party Autonomy	136
II. Number of Arbitrators	137
III. Appointment of Arbitrators and Chairperson	137
1. Qualifications of Arbitrators	137
2. Party Autonomy in Appointment of Arbitrators	138
3. Default Rules for Appointing Arbitrators	138
a) Default Rule for Proceedings with Sole Arbitrator	138
b) Default Rule for Proceedings with Three Arbitrators	139
4. Court Intervention in Appointment of Arbitrators	139
a) Court Appointment of Arbitrators When Nomination Procedures Fail	139
b) Court Appointment of Arbitrators when Nomination Procedures are Unconscionable	139
c) Petition to the Court	140
IV. Multi-Party Arbitration	140
V. Challenge, Removal and Replacement of Arbitrators	141
1. Challenge of an Arbitrator	141
a) Grounds upon which Arbitrators can be Challenged	141
b) Procedure for Challenging an Arbitrator	142
2. Removal of an Arbitrator	142
3. Replacement of an Arbitrator	143
D. The Arbitrator's Contract	143
I. Arbitrator Contract under German Law	143
II. Remuneration of Arbitrator	144
1. Duty to Compensate Arbitrator	144
2. Amount of Fees	145
3. Accrual and Expiration of Claim for Compensation	146
III. Liability of Arbitrator – Duties of the Arbitrator(s)	147
1. Liability for Negligence	147
2. Liability for Specific Performance	147
3. No Liability for Decision in Award	147
E. Jurisdiction of Arbitral Tribunal	148
I. Competence of Arbitral Tribunal to Rule on its Jurisdiction	148
II. Interim Measures of Protection	148

F. The Arbitral Proceedings	149
I. General Rules of Procedure	149
II. Place of Arbitration	150
III. Language of Arbitral Proceedings	151
IV. Exchange of Submissions and Notifications	152
1. Initiation of Proceedings	152
2. Statements of Claim and Defense	152
3. Notification for Insolvency	153
V. Oral Hearings and Written Proceedings	153
VI. Default of a Party	153
VII. Establishing the Facts of the Case	154
1. General Approach to Fact Finding and Gathering Evidence	154
2. Documents	155
a) Production of Documents in the Possession of a Party	155
b) Production of Documents in the Possession of Third Parties	156
c) Confidentiality of Documents and Privilege	156
3. Witnesses	156
a) Written Statements and Testimony	156
b) Preparation of Witnesses	157
c) Transcript or Summary of Witness Testimony	158
d) Parties as Witnesses	158
e) Reimbursement of Witnesses	158
4. Experts	159
a) Party-Appointed Experts in Common Law and Court-Appointed Experts in Civil Law	159
b) Impartiality and Independence of Tribunal-Appointed Expert	159
c) Appointing a Tribunal-Appointed Expert	159
d) Duties of a Tribunal-Appointed Expert	160
e) Party-Appointed Experts	161
5. Court Assistance in Taking Evidence	161
a) Possible Assistance Measures	161
b) International Character of ZPO § 1050	161
c) Sanctions Available to German Courts	162
d) Competent Court	162
e) Requirements for the Application	162
f) Admissibility of a Request	163
6. Privileges	163
G. Making of Award and Termination of Proceedings	164
I. Rules Applicable to Substance of Dispute	164
1. Determination by the Parties	164
2. Determination by the Arbitral Tribunal	164
II. Making of the Award	165
1. Majority Voting	165
2. Recalcitrant Arbitrator	166
3. Separate, Concurring, and Dissenting Opinions	166
4. Decisions on Procedure by Chairperson Alone	167
III. Form and Contents of Award	168
1. Required Contents	168
2. Termination of Proceedings by Award	169

IV. Settlement	170
1. Types of Settlement	170
2. Form and Contents of Award on Agreed Terms	171
V. Termination of Proceedings	171
1. Types of Awards	171
a) Final Award	172
b) Partial Award	172
c) Interim or Interlocutory Award	172
2. Order Terminating the Proceedings	173
VI. Decision on Costs	173
1. Discretion of the Arbitral Tribunal	173
2. Costs of the Arbitration	174
3. Costs of a Procedural Award	176
4. Enforceability of Decision on Costs	176
VII. Correction and Interpretation of Award; Additional Award	177
1. Formal Requirements	177
2. Correction and Interpretation	178
3. Additional Award	178
H. Recourse against Award	179
I. Reasons for Setting Aside an Award	179
1. Invalid Arbitration Agreement	179
2. Due Process	180
3. Excess of Competence or Authority	181
4. Improper Composition of the Arbitral Tribunal and Violation of the Procedural Rules Applicable to Arbitration	182
5. Public Policy	183
6. International Public Policy	184
II. Procedure and Time Limits	185
1. Relationship between Setting Aside Proceedings and Enforcement Proceedings	185
2. Time Limits and Formal Requirements	186
3. Content of Decision Setting Aside the Award	186
I. Recognition and Enforcement of Arbitral Awards	187
I. Procedure for Enforcement Proceedings	187
II. Decision on Enforcement	188
III. Foreign Arbitral Awards	189
Chapter 3: Mediation	191
A. Introduction to Mediation in German Commercial Disputes	191
I. Brief History and Development of Mediation in Germany	191
II. Introduction to Mediation in Germany and the European Union Today	192
B. International Regulatory Developments	193
C. Statutory Framework of Mediation in Germany	194
I. Brief Legislative History of the Mediation Advancement Act	195
II. In-Court Mediation: <i>Güterichter</i> Model	195
III. Out-of-Court Mediation During Ongoing Proceedings	196
IV. Mandatory Court-Annexed Mediation	196

V. Further Mandatory Mediation	197
VI. The Mediation Act	197
D. Mediation Clauses and Agreements	198
I. Content of a Mediation Clause	198
II. General Terms and Conditions	198
E. Mediation and Court Proceedings	199
I. Defense of Mediation	199
II. Suspension of the Limitation Period	199
F. Mediation Procedure	200
I. Mediator	201
1. Selection of the Mediator	201
2. Independence and Impartiality – Disclosure Obligations of the Mediator	202
3. Mediator's Duty to Guarantee each Party's Integration into the Mediation	202
4. Mediator's Duty of Confidentiality	202
5. Mediator Contract	203
a) Remuneration of Mediator	203
b) Liability of Mediator	204
c) Termination	204
II. Agreement on Procedures	205
III. Reference to Rules of a Mediation Institution	205
G. Conclusion of Mediation Proceedings	206
I. Termination of Mediation and its Consequences	206
1. Mediation after Initiation of Court Proceedings	206
2. Mediation without Initiation of Court Proceedings	206
II. Conclusion of a Settlement Agreement	207
III. Enforcement of the Settlement Agreement	207
1. Final and Binding Judgments	208
2. Court Settlements	208
3. Settlements before a State-Approved Conciliatory Entity	208
4. Notarial Deeds	209
5. Enforceable Lawyers' Settlements	209
6. Award on Agreed Terms	209

Part 2: Relevant Statutory and Regulatory Materials

A. German Statutory Instruments	211
I. Code of Civil Procedure (Excerpts)	211
II. German Judicature Act (Excerpts)	261
III. Recognition and Enforcement Implementation Act (AVAG) (Excerpts)	284
IV. Act on the Implementation of the Hague Convention	306
V. German Mediation Act	311
B. EC Regulations	318
I. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and	

the recognition and enforcement of judgments in civil and commercial matters (recast)	318
II. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000	348
III. Council regulation (EC) No. 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters	359
IV. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure	369
V. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims	382
C. Bilateral and Multilateral Treaties	395
I. List of Treaties Relevant to International Procedural and Arbitration Law in Germany	395
II. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters	398
III. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters	405
IV. CONVENTION ON CHOICE OF COURT AGREEMENTS	414
D. German Institutions and Rules for Arbitration	426
I. List of Arbitration Institutions in Germany	426
II. Arbitration Rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)) in force as of 1 July 1998 (Schedule of Costs in force as of 1 April 2014)	430
E. German Institutions and Rules for Mediation	446
I. List of Mediation Institutions in Germany	446
II. Mediation Rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit (DIS)) in force as of 1 January 2002, amended in 2010 (Schedule of Costs in force as of 1 October 2004)	448
Appendix 1 Selected Sample Calculations of Fees in German Proceedings	453
Appendix 2 Bibliography	461
I. Commentaries and Books in the German Language	461
II. Commentaries, Books, and Articles in the English Language	462
Appendix 3 German-English Glossary	467