"English Spoken" in German Commercial Court Litigations

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Status Quo

Currently, German statutory law provides:

"the German language is the official language used in court."

Cross border commercial contracts are usually drawn up and negotiated in the English language. Naturally, in the event of a dispute, the parties aim to avoid a mix-up between contract and dispute language, and, therefore, prefer English as the official language of litigation. Neither English nor any other foreign language is, however, an optional official language before the ordinary German courts.

As one of the consequences, it is the German market standard that legal opinions contain the qualification that any enforcement of the relevant opinion document at issue in Germany may require the translation of foreign language documents into German.

Experience shows that a foreign party is reluctant to attend oral hearings before German courts in the German language and to depend on interpreters. This particularly applies if the opponent of such foreign party is a German entrepreneur and, therefore, familiar with the German language. In this case, the foreign party is concerned about suffering procedural disadvantages.

If parties to a disputed case governed by German laws wish to litigate their case in English, they are required to enter into an arbitration agreement and negotiate the dispute before an arbitration court, instead of the ordinary German courts.

This is to the disadvantage of the German commercial market players who are increasingly forced to accept foreign laws and jurisdictions which have a detrimental effect on the German court system, attorneys admitted in Germany, and the competitiveness of Germany as a legal and litigation place as a whole.

German Initiative “English Spoken”

The fact that German is the sole official language in German courts may well change. There is a strong German initiative to establish English as the second official language governing specific civil court litigations.

The main purpose of this initiative is to strengthen Germany as a place for litigation. The initiative wants to create an incentive for contracting parties to choose German law as the governing law even though the contract language would be English. So, the competitiveness of German law
would be improved, especially when considering that contracting parties usually favor an agreement between their contractual governing law and the jurisdiction clause.

**Pilot Scheme of 1 January 2010**

Initially, a pilot scheme has been established effective January 2010 in which various German high and appellate courts of various major German cities of the Rhine region (Cologne, Bonn and Aachen) are participating. This pilot scheme entitles litigators to opt for English as the official language of oral hearings in civil proceedings. Such option only requires (i) an international relation of the case at issue and (ii) the litigators’ waiving their right to request an interpreter. However, this pilot scheme limits the scope of the English language to oral hearings. Writs, court decisions and other procedural documents are still required to be prepared in German.

**Reform Bill of 12 February 2010**

As a second step, in mid February 2010, various German states (Hamburg, Hesse, Lower Saxony, and North Rhine-Westphalia) introduced a reform bill on the “Establishment of Chambers for International Commercial Matters at German High Courts” (the “Bill”). An international commercial matter in the meaning of the Bill requires (i) an international relation (e.g., agreement in a language other than German, foreign contractual party) and (ii) the mutual consent of the litigating parties that the matter should be handled in English.

If English is chosen as the official language, this would apply to the proceedings in the high court, the first appellate proceedings (Berufung) as well as in additional appeals on points of law (Revision). English would become the official language for all writs, any oral hearings, attorney pleadings, court minutes and the announcement of court decisions.

The Bill has led to some criticism from the German legal world. The president of the German Supreme Court (Bundesgerichtshof) has warned against “an over brisk globalization euphoria” and that some judges may not be sufficiently familiar with English legal terms and that the English language may cause the risk of judicial errors.

The Bill is currently being assessed by the competent committees. No specific time has been set for a parliamentary decision on the Bill, nor its specific terms and effective date.

Finally, neither the Bill nor the Bill’s explanatory preamble answers the question whether or not German attorneys would in future be required to wear wigs in oral hearings before the English-spoken German court proceedings.

—if you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Frankfurt lawyer:

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