



# INTERNATIONAL BRIEFING

## Dear reader,

Welcome to the first edition of our International Briefing for 2020!

Coronavirus. Almost everything in the first few months of 2020 has revolved around it. The pandemic has forced us from our workplaces into our homes, together with our children whose schools, kindergartens and childcare centres have closed. The global impact of the coronavirus on society and companies is tremendous. In the economic world, employees have been just as affected as customers, suppliers and investors. Numerous legal fields and many industries have faced with new questions and challenges.

To help you navigate this difficult time, we are bundling answers and information from all fields of law in our Corona Information Centre on [our website](#).

This edition contains a broad array of topics of interest to international business, with contributions from many of our practice groups, ranging from Corporate and M&A Law to IP/IT and Labour Law.

We look at the current German legislative initiatives for tighter controls on investments from non-EU countries, provide updates on the reporting obligations for the German Transparency Register and review the status of Brexit.

Distressed M&A in Germany – the acquisition of companies out of insolvency – offers opportunities, but also risks. A broad range of legal issues and areas must be considered in such transactions (e.g. insolvency, corporate, labour and tax law issues, and in some cases even antitrust law issues). We highlight and explain a few of the more general legal issues.

We also delve into the issue of cybersecurity under German law, provide an overview of what needs to be considered with respect to unions and works councils in Germany and, last but not least, give a detailed overview of the current developments concerning sustainability in times of coronavirus.

We hope that you will find the information provided helpful in your daily business.

Stay safe!

Best regards,



**Dr Rainer Bierwagen**  
Member of the French Desk



**Dr Guido Krüger**  
Member of the French Desk



**Dr Dietmar O. Reich**  
Member of the French Desk

## Corona Information Center of BEITEN BURKHARDT

The global impact of the coronavirus on society and companies is tremendous. In the economic world, employees are just as affected as customers, suppliers or investors. Numerous legal fields and many industries are faced with new questions and challenges.

BEITEN BURKHARDT is bundling answers in its Corona Information Centre. Blog posts, flyers and other publications are continuously supplemented and updated.

[Read more](#)

## Strengthening of Investment Controls in Germany and Europe

Over the last two years, investment control rules were strengthened throughout Europe, or for the first time adopted, and a common framework for the assessment of foreign direct investments created by the European Union. The current health crisis which leads to lower stock values of publicly traded companies and generally weakened company values, stokes fears of foreign companies buying the control of EU companies “on the cheap”.

It is against this background that Germany formally submitted amendments to the national investment control rules to its parliament, that France created a special investment fund and that the EU Commissioner for competition intimated in an interview that EU countries could build up stakes in important companies.

[Read more](#)

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## Update: Federal Ministry for Economic Affairs Presents Amendments to German Foreign Trade and Payments Ordinance with Supplements to the Health Sector

At the end of April, the German Ministry for Economic Affairs and Energy presented the draft for the 15th amendment of the Foreign Trade and Payments Ordinance, which already incorporates some of the planned amendments and provides for further modifications affecting the health sector.

[Read more](#)

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## Distressed M&A in Germany

Insolvencies in Germany were at a record low in 2019 and insolvency administrators were feeling underworked. And along came a virus that changed economic reality in a heartbeat. Whilst the German legislative has done its utmost to mitigate the economic consequences, it does not take the magical talent of the future-teller to realize: there will be numerous insolvencies in 2020 and 2021, and with that bargains for investors. Obviously, there are not only opportunities, but also risks in acquiring a company out of bankruptcy. Most, often all, risks can be eliminated by a careful examination in the run-up to the acquisition (due diligence) as well as by a careful drafting of the contract. The range of legal issues to be considered touches on a number of legal areas. In the foreground are insolvency, corporate, labour and tax law issues,

in individual cases also antitrust law issues. We will highlight a few of the more general legal issues.

[Read more](#)

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## Brexit – Nine months to go and uncertainties galore

The United Kingdom of Great Britain and Northern Ireland (UK) left the European Union at the end of January 2020, but will still be treated as an EU Member State until the end of this year 2020. The EU and the UK have each put forward a draft for the future relationship and each has publicly advocated different visions for the future “EU-UK partnership”.

The combative stance of some protagonists is certainly not conducive to finding an agreement on post-divorce relations. The UK Government under Boris Johnson has hardened or even reversed the UK position in a way that leaves the EU perplexed, fearing that economic rationality is being sacrificed on the altar of Brexit idolatry. The EU's insistence on a level playing field and effective judicial control does not make the negotiations easier for the UK.

[Read more](#)

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## First-time obligation of transparency for foreign companies when acquiring real estate in Germany

On 12 December 2019, the German Bundestag (Federal Parliament) passed the amendment to the German Money Laundering Act which serves to implement Directive (EU) 2018/843 of the European Parliament and Council of 20 May 2018 designed to prevent the use of the financial system for the purpose of money laundering and terrorist financing.

The main amendments relate to the extended public access to the German Transparency Register and the extension of the circle of those obliged to notify the German Transparency Register. As a result of the new regulation, foreign companies will for the first time be required to provide information on their ownership structure when they undertake to acquire real estate in Germany. The registration of the beneficial owner of the foreign company in the German Transparency Register is a mandatory requirement for a notarial recording of the asset purchase Agreement.

[Read more](#)

## Update on the German Transparency Register: Reporting obligation for GmbH & Co. KG's due to the change in practice of the German Federal Office of Administration

Since October 2017, German law requires the so-called "beneficial owner" of a GmbH or partnership to be entered in the Transparency Register. The beneficial owner under the German Money Laundering Act is any natural person who directly or indirectly controls more than 25% of the capital shares or voting rights in a Company.

For GmbH & Co. KGs (German limited partnerships with a limited liability company as general partner), as well as for UG (German Entrepreneurial Company) & Co. KGs, it has not been assumed to date that there is an obligation to report to the Transparency Register as the information provided in respect of the limited partners, most of whom are beneficial owners, has presumably been derived from the commercial Register.

Now, however, the practice of the German Federal Office of Administration ("BVA") which monitors the fulfilment of obligations in connection with the Transparency Register and punishes non-compliance with fines has changed significantly.

[Read more](#)

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## Corona vs. CSR: Does the Virus also Stop Sustainability?

In our current newsletter "Corona vs. CSR: Does the Virus also Stop Sustainability?" we give a detailed overview of current developments on the topic of sustainability in times of the coronavirus and the resulting arguments for the unbroken relevance of sustainable management.

[Read more](#)

## Cybersecurity in Germany

The regulation and promotion of cybersecurity in German law is achieved by an array of different statutes. Some of these regulate cybersecurity in relation to particular types of data, some regulate cybersecurity in particular industries or sectors, and some regulate cybersecurity in companies as part of broader compliance requirements.

[Read more](#)

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## Doing Business in Germany – Unions and Works Councils in Germany – an overview

Almost every time foreign companies are advised in the context of their market entry in Germany, the questions are asked: What is the relationship between trade unions and works councils? What are the responsibilities of trade unions and works councils? Must collective agreements be adopted? How can the election of a works council be prevented?

[Read more](#)

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## Webinar "What US companies with business in Germany, France and Italy should know about the legal environment with COVID-19"

BEITEN BURKHARDT organized a webinar on "What US companies with business in Germany, France and Italy should know about the legal environment with COVID-19" on 5 May 2020. We were happy that our colleagues from ALTANA and Nctm covered France and Italy. The focus of the webinar was on supply chain and lease agreements; short-time work/furlough work – wage relief measures and liability and fiduciary duties of general managers. You can download the presentation as well as the recording of the webinar on our Corona Information Center ([Link](#)).

## ELA

BEITEN BURKHARDT joined the Employment Law Alliance (ELA) retroactively as from 1 January 2020 and, in so doing, became its exclusive member for Germany. The ELA ([www.ela.law](http://www.ela.law)) is a worldwide alliance of law firms leading in employment law, which advises employers globally at the highest level. With more than 3,000 lawyers specialized in employment law the organisation is represented in more than 100 countries and therefore is the largest international alliance of law firms leading in employment law.

[Read more](#)

## BEITEN BURKHARDT ranked in the top tier of best Corporate legal firms 2020 by Wirtschaftswoche

The leading German economy weekly *Wirtschaftswoche* recently ranked BEITEN BURKHARDT in the top tier of the best legal firms in the field of Corporate law for 2020. A three level procedure involving market analysis by the Handelsblatt Research Institute, a survey and recommendations of an expert jury formed the basis for this ranking.

## About the French Desk

Our French Desk supports French companies that are looking to establish themselves on the German market or are already active in Germany, as well as German companies that intend to become active on the French market. We have team members located in all of our offices and can manage mandates in French.

We advise on all corporate, labour and tax law issues, and on EU law. We assist, for example, with the conclusion of partnerships and strengthen and support companies when planning market entry and during all phases of their business.

Our multi-disciplinary approach and close cooperation between experts from various offices means we can tailor our team to your needs while always providing you with comprehensive advice of the highest quality.

## About the Corporate / M&A practice group

### CORPORATE

BEITEN BURKHARDT provides comprehensive corporate law advice on all aspects and issues arising in relation to the establishment and structuring of companies, current company management, reforms in connection with reorganisation or generational changes, or in connection with the sale or acquisition of business units or their liquidation and dissolution. We advise medium-sized companies and multinational groups, family-owned companies and their shareholders, listed and unlisted stock corporations, publicly-owned companies and foundations, start-ups and venture capital firms, as well as strategic and financial investors from Germany and abroad. Excellent technical knowledge and many years of experience in corporate law and across various sectors allow us to provide our clients with individual and practical solutions for complex, specialised topics and legal issues arising in day-to-day business.

### M&A

Mergers & Acquisitions has been a core area of expertise for BEITEN BURKHARDT since the establishment of the firm. We advise medium-sized companies and multinational groups, family-owned companies and their shareholders, listed and unlisted stock corporations, publicly-owned companies and foundations, start-ups and venture capital firms as well as strategic and financial investors from Germany and abroad on national, international and cross-border transactions, auctions and exclusive negotiations, carve-outs, takeovers and mergers. Our know-how and practical transaction expertise allows us to optimally assist our clients during all phases of M&A transactions. We advise on preparations and the conceptual design of a transaction, lead and manage legal, tax and economic due diligence assessments of the target(s), assist with and steer contractual negotiations, provide support during signing and closing of the transaction documents, and assist with post-closing and post-merger activities.

## AWARDS



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### **EDITOR IN CHARGE**

Dr Manfred Anduleit | Lawyer

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### **YOUR CONTACTS**

#### **BEIJING**

Suite 3130, 31st floor | South Office Tower

Beijing Kerry Centre | 1 Guang Hua Road | Chao Yang District

Beijing 100020

Susanne Rademacher

Tel.: +86 10 8529-8110 | [Susanne.Rademacher@bblaw.com](mailto:Susanne.Rademacher@bblaw.com)

#### **BERLIN**

Luetzowplatz 10 | 10785 Berlin

Dr Christian von Wistinghausen

Tel.: +49 30 26471-351 | [Christian.Wistinghausen@bblaw.com](mailto:Christian.Wistinghausen@bblaw.com)

#### **BRUSSELS**

Avenue Louise 489 | 1050 Brussels

Dr Rainer Bierwagen

Tel.: +32 2 6390000 | [Rainer.Bierwagen@bblaw.com](mailto:Rainer.Bierwagen@bblaw.com)

Dr Dietmar O. Reich

Tel.: +32 2 6390000 | [Dietmar.Reich@bblaw.com](mailto:Dietmar.Reich@bblaw.com)

#### **DUSSELDORF**

Cecilienallee 7 | 40474 Dusseldorf

Dr Guido Krüger

Tel.: +49 211 518989-180 | [Guido.Krueger@bblaw.com](mailto:Guido.Krueger@bblaw.com)

#### **FRANKFURT AM MAIN**

Mainzer Landstrasse 36 | 60325 Frankfurt am Main

Dr Detlef Koch

Tel.: +49 69 756095-408 | [Detlef.Koch@bblaw.com](mailto:Detlef.Koch@bblaw.com)

#### **HAMBURG**

Neuer Wall 72 | 20354 Hamburg

Dr Christian Ulrich Wolf

Tel.: +49 40 688745-124 | [ChristianUlrich.Wolf@bblaw.com](mailto:ChristianUlrich.Wolf@bblaw.com)

#### **MOSCOW**

Turchaninov Per. 6/2 | 119034 Moscow

Falk Tischendorf

Tel.: +7 495 2329635 | [Falk.Tischendorf@bblaw.com](mailto:Falk.Tischendorf@bblaw.com)

#### **MUNICH**

Ganghoferstrasse 33 | 80339 Munich

Dr Maximilian Emanuel Elspas

Tel.: +49 89 35065-1242 | [Maximilian.Elspas@bblaw.com](mailto:Maximilian.Elspas@bblaw.com)

#### **ST. PETERSBURG**

Marata Str. 47-49 | Lit. A | Office 402

191002 St. Petersburg

Natalia Wilke

Tel.: +7 812 4496000 | [Natalia.Wilke@bblaw.com](mailto:Natalia.Wilke@bblaw.com)