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Posting of Chinese Employees to Germany

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Germany is an open and innovative centre for business in the heart of Europe. Foreign professionals sent from their home countries have a positive impact on its economy. The Federal Ministry for Economic Affairs and Energy therefore aims to make the posting process as transparent as possible for companies and employees.

This publication on the posting of employees from China to Germany is a good introduction to the basic regulations governing the posting of employees.

It was developed by the German delegation of the Sino-German Legal Working Group. The working group works under the umbrella of the Sino-German Joint Economic Committee of the Chinese Ministry of Commerce and the German Federal Ministry for Economic Affairs and Energy.

List of Authors*

Name	Institution / Company
Michael-Florian Ranft	Taylor Wessing Partnerschaftsgesellschaft mbB
Christina Schön	Germany Trade & Invest
Udo Sellhast	Germany Trade & Invest
Dr. Petra Timmermann	PT Law
Prof. Dr. Christian Reiter	Daimler AG
Tim Baltruschat	BASF SE
Dr. Martin Schlag	thyssenkrupp AG
Nicolás Knille, LL.M.	Telefónica Germany GmbH & Co. OHG
Dr. Marcus Iske	Fieldfisher (Germany)
Mirko Bien	Siemens AG
Dr. Holger Lampe	KPMG AG Wirtschaftsprüfungsgesellschaft
Stefanie Vogler	KPMG AG Wirtschaftsprüfungsgesellschaft

*) listed according to order of contributions

Content

1. Introduction and cultural differences

Like China is for German businesses, obviously Germany is most promising and important for Chinese businesses too. The bilateral trade volume between the two countries climbed from peak to peak every year, e.g. from 2017 to 2018 by nearly 8 percent to a total of almost EUR 200 billion, and – though slightly slowed down by the pandemic - from EUR 206 billion in 2019 to the all times high of EUR 212 billion in 2020. While the flow of materials, products and services increased continuously, the Chinese investment could not keep path. Following the record in 2017 in which year Chinese businesses have invested the record amount of EUR 11.6 billion in Germany, the Chinese investment into Germany counted for EUR 2.1 billion in 2018 and decreased to EUR 0.7 billion in 2020, be it greenfield projects or mergers and acquisitions. However, this seems mainly driven by mobility restrictions established to fight the pandemic and the nowadays more complex investment regulations aiming at safeguarding the public interest in Germany's sweet spots such as high-technology and manufacture capabilities. Today, the implementation of investments in Germany may take more time than businesses were used to in the years before the pandemic.

However, when planning to or doing business in Germany, Chinese should be aware of the relevant legal framework as regards coming to and working in Germany. Though China and Germany have quite some labor related legal principles in common, such as providing shelter for staff and workers against arbitrary employers under labor law, there are significant differences which highly affect the way business is and can be done in Germany.

Complexity is one of them: in addition to a high number of laws, rules and regulations on national and European level governing work in Germany, many issues are governed by adjudication, for example, of the Federal Labor Court (Bundesarbeitsgericht) and thus, in particular with the digitization of labor, under constant development. On the other hand, such legal framework including the mentioned case law applies everywhere the same in Germany, i.e. whether working in Berlin, Frankfurt, Dresden or Munich, the rules are the same.

Culturally, Germans usually take serious and feel highly responsible for their work. Likewise, it is a common understanding in Germany of labor as a decisive factor in developing the country's wealth. German employees enjoy freedom of association and the right to representation by a trade union should they so desire. In order to provide for social equity and peace as well as for a dignified life of everybody, Germany's government maintains and continuously develops a close meshed social network to be fed and strictly obeyed by employer and employee and rules for employee participation in certain cases.

This booklet is written by practitioners only. It shall render Chinese business people a pragmatic and easily understandable introduction into the German legal framework on coming to and working in Germany. It also provides for hints where further and more detailed information can be obtained. For example, the reader will find links to the most important laws and regulations as well as other useful resources in the back-up at the end of this booklet. Where terms are highlighted in blue, the online version provides for links to such specific document or resource.

2. Immigration law

During the last decade, the German immigration law has been made increasingly flexible. Especially employees permanently working in Germany or posted to Germany on a temporary basis benefit from relaxed conditions to reside and work in Germany. The EU Blue Card in 2012, new regulations for intra-corporate transfers in 2017 and the fundamental reform of skilled employees' immigration rules in 2020 are the main examples for this development. But also self-employed persons like for instance entrepreneurs profit from few requirements for business trips to and stays in Germany.

Due to the ongoing Covid-19 pandemic Germany has temporarily introduced travel restrictions and border controls. For up-to-date information in this regard, please refer to the dedicated websites of the German Federal Ministry of Interior and the German missions in China. The information compiled in this chapter refers to the legal framework for entry to and residency in Germany apart from the Covid-19 pandemic specific regulations.

The framework for immigration and residence in Germany is stipulated in the Residence Act (Aufenthaltsgesetz) which is accompanied by in particular the Residence Ordinance (Aufenthaltsverordnung) and the Employment Ordinance (Beschäftigungsverordnung).

In addition, administrative guidelines provide subordinate authorities with a framework of how to exercise their discretionary powers granted by laws. However, courts are not bound by these guidelines. Important administrative guidelines on immigration law are especially:

- Federal Ministry of Interior (Bundesministerium des Innern): General Administrative Regulations on the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz)
- Federal Ministry of Interior: Implementing Instructions on the Skilled Immigration Act (Anwendungshinweise zum Fachkräfteeinwanderungsgesetz)
- Federal Employment Agency (Bundesagentur für Arbeit): Administrative Instructions of this Agency on the Residence Act and the Employment Ordinance (Fachliche Weisungen zum Aufenthaltsgesetz und zur Beschäftigungsverordnung)

2.1. Residence title for nationals of third countries (like China)

In order to enter or stay in Germany, Chinese citizens as well as citizens of most non-EU countries require a **residence title**. There are different kinds of residence titles for specific purposes subject to the length of stay and intended activity in Germany. These include Schengen and national visa, residence and settlement permit. In order to work in Germany, a Schengen visa generally is not sufficient, but a residence permit is needed. However, there are numerous exceptions to this rule. For a non-exhaustive overview, please see sections 2.2.1. to 2.2.9 below. Chinese applicants planning a long stay in Germany must first apply for a national visa for the entry into Germany and then on site request the residence or settlement permit.

2.1.1. Different types of residence titles in Germany

Before applying for a residence title, it is necessary to clarify which kind of residence title is applicable in the individual case. As already mentioned, German law differs between:

- Schengen visa,
- National visa,
- Residence permit (including special kinds of residence permit like e.g. the ICT Card or the EU Blue Card),
- Settlement permit.

A Schengen visa authorizes the holder to enter and stay in Germany for a short-term period of up to 90 days in any 180-day period.

The regular Schengen visa permits the holder to one single entry into the Schengen area. Multiple entry visas also exist and entitle holders to multiple short stays (each of up to 90 days within any 180-day period) in the Schengen area over a long time. A multiple entry visa may be issued for a period of up to maximum five years if the applicant meets the requirements of a proven frequent travel activity and reliability in terms of legal use of previously granted visa. For further information please see the website of the German visa application centre partner VFS Global.

However, individual rules apply for citizens with SAR passports from Hong Kong or Macau, who can stay in Germany for up to 90 days without a visa.

Chinese applicants planning a long stay in Germany must first apply for a national visa for the entry into Germany and then on site request the residence or settlement permit.

A **residence permit** or a **settlement permit** authorizes the holder to **long-term stays** of more than 90 days in any 180-day period and to **work on a self-employed basis** or as **an employee in Germany**. The residence permit explicitly states whether a gainful occupation is allowed. German residence law does not provide for a specific work permit. A residence permit is a temporary residence title, whereas a settlement permit is unrestricted in time. Also the settlement permit automatically includes the right to take up gainful employment.

General preconditions for the granting of a residence title are that the Chinese applicant e.g. has to prove a secure subsistence, sufficient health insurance coverage, an established identity and nationality. The granting of a residence permit further presupposes that the Chinese national has entered Germany with a so called national visa and already has furnished the key information in the visa application, e.g. the purpose and intended place of stay in Germany (please refer to section 2.2. below for detailed information). Entering Germany with a Schengen visa is not sufficient for obtaining a residence permit.

Conversion of a residence permit into a permanent **settlement permit** is possible after a person has held a residence permit for five years, provided the following requirements are fulfilled:

- secured livelihood,
- payment of statutory or voluntary pension insurance contributions for at least 60 months (or comparable benefits entitlement),
- no preclusion by reasons of public safety or order,
- permission to be in employment for employees,
- possession of all other permits required for the permanent pursuit of the economic activity,
- adequate knowledge of the German language, legal and social system, and
- sufficient living space for the employee and family members of the employee's household.

Holders of an EU Blue Card or a residence permit for the purpose of self-employment as well as skilled employees may obtain a settlement permit even earlier.

Summary: Residence titles for Chinese employees or self-employed persons in Germany

Residence title	Entitlement	Information applicable to Chinese nationals
Schengen visa	Entry into Germany followed by a short-term stay (up to 90 days in any 180-day period). Work allowed only in exceptional cases.	Necessary for all Chinese nationals except for SAR passport holders from Hong Kong or Macau. Application via visa application centre or German mission in China.
National visa	Entry into Germany followed by a long-term stay (for which an additional residence or settlement permit is required).	Required by all Chinese nationals.
Residence permit or **settlement permit**	Long-term stays and stays with the intention to take up gainful occupation. Residence permit: limited time Settlement permit: unlimited time	Depending on the planned gainful occupation, Chinese nationals have to state the purpose (e.g. self-employed activity or employment) when applying for a national visa.

2.1.2. Application procedure for Chinese nationals

The residence title has to be applied for at the competent German mission abroad (Embassy or Consulate General) or a visa application centre prior to entering Germany. VFS Global is Germany's official partner for handling Schengen visa applications. These centres are only available for Schengen visa applications. The German missions in China (Beijing, Shanghai, Guangzhou, Chengdu, Shenyang and Hong Kong) also accept national visa applications.

Locations of German visa application centres in China

Consular area	Visa application centres in cities
Beijing	Beijing, Wuhan, Jinan, Xian and Changsha
Shanghai	Shanghai, Hangzhou and Nanjing
Guangzhou	Guangzhou, Shenzhen and Fuzhuo
Chengdu	Chengdu, Chongqing and Kunming
Shenyang	Shenyang
Hong Kong	Hong Kong, Macau

Source: German missions in China

According to information from the German missions in China complete applications for a Schengen visa in general are processed within a few working days. The application fee is EUR 80 plus an additional service fee if the application is filed in one of the visa application centres.

The processing time for a national visa is longer due to the required involvement of the local German immigration office (Ausländerbehörde) and in specific cases also the German Federal Employment Agency (Bundesagentur für Arbeit). According to the German missions in China, the standard processing time is between a few days and several months, depending on the purpose of the stay. The application fee for a national visa is EUR 75. After entry in Germany the national visa is subsequently converted into a residence permit by the competent local immigration office upon another application. The application with the local immigration office should be filed well in advance before the expiry of the national visa. For instance, the immigration office in Berlin online suggests that the appointment should be at least four to six weeks before the national visa expires. The time frame may differ from city to city. For the issue of a residence permit additional fees of around EUR 100 are due.

Additionally other notifications to authorities may be necessary. For instance, anybody establishing a residence in Germany has to register with the local registry office within two weeks.

2.2. Visa, residence and work permit requirements for important categories

This section deals with the requirements for Schengen visas and residence permits for the purpose of employment or self-employment. **Schengen visas** require a proof of the intended purpose of the stay in Germany and the secured financing of the stay, e.g. by providing a bank statement of the applicant, an invitation letter from a German company, a travel health insurance, an employment/company certificate as well as the business license of the Chinese company and a bank statement of the employer (if the employer pays for the journey). This enumeration is not exhaustive, for more detailed information please see the websites of the German missions in China (Chinese language only) and of VFS Global.

National visas and residence permits for the purpose of employment must be applied for with further documents (in German language), e.g. proof of health insurance in Germany, CV, employment contract or secondment contract, proof of qualification and language skills, Chinese employer's certificate and (if possible) advance approval by the German Federal Employment Agency (Bundesagentur für Arbeit). As this list is not exhaustive either, detailed information is given by the German missions in China (Chinese language only).

The Skilled Immigration Act, in force since March 2020, stipulates the conditions under which qualified professionals from outside the EU can work in Germany. **Qualified professionals** include university graduates and persons who have successfully completed vocational training for at least two years. In general, residence permits for qualified professionals are issued where the following requirements have been met:

- applicants have a qualification officially recognized in Germany,
- a concrete job offer and
- approval from the Federal Employment Agency (FEA).

Further first-time applicants aged 45 or older must under circumstances prove that they have adequate provision for old age.

According to the Federal Ministry of Interior's Implementing Instructions on the Skilled Immigration Act, residence permits for qualified employees generally require a local German employment relationship (not applicable to secondments of Chinese employees with a Chinese employment relationship). In cases of secondments the ICT Card or some other special residence permit cases might be applicable (see below). For employment law differences between a local German employment relationships and secondments/assignments, please see section 3.

Qualified professionals can be granted a residence permit for up to four years. A permanent settlement permit can be granted after four years. Please refer to the section 2.1.1 above for detailed requirements.

Employee qualifications (academic and vocational) not obtained in Germany must be **checked for equivalence** with German qualifications and **officially recognized** before coming to Germany.

An exception is made for IT specialists with an annual salary of at least EUR 51,120 (as of 2021), having

gained at least three years of relevant professional experience during the past seven years. Additionally, the foreigner must also have adequate knowledge of the German language. In individual cases the language requirement can be waived.

As to the equivalence of academic qualifications, many Chinese universities, university degrees and their status of recognition in Germany are already entered as equivalent in the Anabin database (German language only). In other cases, the comparability of a Chinese university degree is to be checked by the Central Office for Foreign Education (Zentralstelle für ausländisches Bildungswesen – ZAB). In order to speed up the national visa process, the Chinese qualified employee with a Chinese university degree can apply for a statement of comparability himself/herself. The German web portal Make it in Germany provides further information on the procedure.

With regard to the recognition of vocational qualifications or when a regulated profession (e.g. doctor or lawyer) is to be exercised in Germany, the Service Center for Professional Recognition has a pilot function in informing about the recognition procedure. It also serves as a central contact to applicants during the recognition process. The recognition procedure takes place at the federal state level and the competence of an authority depends on the specific qualification.

Please refer to the Recognition in Germany portal for further information on the recognition of foreign professional qualifications.

The Federal Employment Agency must issue its approval before a foreign employee can be hired in Germany. An approval may be issued:

- If a foreign employee is hired on the same terms and conditions of employment as comparable German employees (especially in terms of wages and working hours) and
- the skilled worker is employed in a role appropriate to his/her qualification.

Certain professional groups can be granted a residence permit for employment without any Federal Employment Agency approval. Some of these cases are mentioned in the following sections.

A new feature of the Skilled Immigration Act is the introduction of an accelerated administrative procedure. The fast track procedure is available for an extra fee of EUR 411 and applicable to qualified professionals applying e.g. for a residence permit for employment and Blue Card applicants.

In the event of a specific job offer, the German employer can initiate the procedure at the competent immigration office, provided authorization by the applicant employee has been granted. Moreover, an extensive agreement must be concluded between the employer and the competent immigration office. This option will significantly shorten the duration of the administrative procedure. For detailed information about the fast track procedure, please refer to the Make it in Germany website dedicated to the procedure.

Through the implementation of the European Intra Corporate Transfers Directive 2014/66/EU (ICT Directive) into German national law in 2017, non-EU managers and specialists can profit from the so called ICT Card and associated specific short-term mobility facilitations.

The ICT Card requires an intra-corporate transfer from a sending entity outside the EU to a host entity in Germany. Both entities must be a part of the same company or company group. Eligible employees are non-EU managers, specialists and trainees, who have been employed in the sending unit for at least six uninterrupted months immediately preceding the transfer. The duration of the transfer must exceed 90 days and last up to a maximum of three years (one year for trainees).

Moreover, the work contract and, if necessary, the assignment letter e.g. need to state the duration of the stay, certain employment conditions, an evidence that the Chinese employee will be able to transfer back and proof of the employee's professional qualification.

Additionally the short-term mobility of non-EU nationals having an ICT Card of another EU state has been eased. Under specific conditions, employees belonging to category may be able to work in a German company (belonging to the same company or the same group of companies) for up to 90 days within any 180-day period without a German residence permit. The German Federal Office for Migration and Refugees has to be notified about this and specific evidence has to be provided.

2.2.1. Executives

Chinese **employed executives** of a German company can generally enter and stay in Germany for a period of up to 90 days in any 180-day period with a Schengen Visa. The term "executive" applies to board members, which are legally authorized to represent the company, as for instance a managing director of a German GmbH. But also executive staff fall under this category. Executive staff are typically authorized to make independent personnel decisions, have a general power of attorney or Prokura or carry out tasks which are of importance to the company's existence and its development.

For long-term stays exceeding 90 days in any 180-day period, a residence permit for the purpose of employment is necessary for employed executives. During the national visa application procedure, the German Federal Employment Agency is involved and checks the comparability of the employment conditions. In the case of an annual gross income of EUR 85,200 (as of 2021) it can be assumed that the executive receives a comparable salary. This amount is adjusted annually and based on the assessment ceiling of the general pension insurance. A specific professional qualification is however not required for employed executives.

Long-term stays of **self-employed executives** are subject to different rules (please refer to section 2.3 below).

A special possibility in cases of long-term **intra-corporate transfers** of executives is the ICT Card, provided they qualify as "managers" within the meaning of the European ICT Directive (Directive 2014/66/EU) and

the German Residence Act. This applies to persons holding a senior position, who primarily direct the management of the host entity, receiving general supervision or guidance principally from the company's board or shareholders (or equivalent). Further this "manager" position includes the following tasks:

- Directing the host entity or a department or subdivision of the host entity,
- Supervising and controlling work of the other supervisory, professional or managerial employees,
- Having the authority to recommend hiring, dismissing or other personnel action.

For further information on the conditions for the issuance of an ICT Card please see section 2.2 above.

2.2.2. Specialists (depending on qualification)

The **German Employment Ordinance** contains specific provisions for residence permits for specialists. The German Federal Employment Agency sees specialists as employees with specific expertise essential for the services, research, procedure, technique or management of a company. The expertise may be focused on the internal operations (e.g. internal development of products) as well as on the external sales activities. According to the Federal Employment Agency, this is only applicable to specialists with an employment relationship in Germany. An approval by the Federal Employment Agency is required.

However, the **ICT Card** is a possible option for long-term secondments of Chinese specialists in the course of intra-corporate transfers from a Chinese company to a German host entity of the same company (group). The European ICT Directive (Directive 2014/66/EU) and the German Residence Act define a specialist as a person working within the group of undertakings possessing specialized knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, specific knowledge of the host entity is of importance as well as a high level of qualification. Moreover adequate professional experience for activities requiring specific technical knowledge is necessary. For further information on the conditions for the issuance of an ICT Card please see section 2.2 above.

The German Employment Ordinance provides an alternative option for Chinese employees of a **multinational company group** to obtain a residence permit for up to three years. The work in the German host entity must be inevitably necessary to prepare projects of the company (group) in China. The Chinese employee must be involved in the project in China and must have special and company specific knowledge in addition to his/her qualification, which must be comparable to a German skilled worker (Facharbeiter). According to the German Federal Employment Agency, the employee can maintain his/her Chinese employment contract.

This possibility is also open to employees whose employers are no multinational company (groups), if the German contractor and the Chinese client (employer) contractually agree that the Chinese employee must be sent to Germany to prepare the project in China. Also in this case the posting to Germany must be necessary for the execution of the project in China.

2.2.3. Highly qualified employees (EU Blue Card)

The so called "**EU Blue Card**" (Blaue Karte EU) allows highly qualified non-EU citizens to be fast-tracked to employment in Germany. Foreigners may apply for this special kind of residence permit if they hold a German university degree (or a proven comparable qualification) and provide documentary evidence of an employment contract with an annual gross salary of at least EUR 56,800 (as of 2021). The German Federal Employment Agency is not involved at all prior to issuing the EU Blue Card for this category. Nonetheless, the employment needs to be appropriate to the qualification obtained.

The annual gross salary level for the EU Blue Card is lowered to EUR 44,304 (as of 2021) for professions with a particular skill shortage (e.g. medical doctors and science and engineering professionals as well as information and communications technology professionals). More precisely the groups 21, 221 and 25 of ISCO 08 (International Standard Classification of Occupations 2008 of the International Labour Organization) are covered. An approval by the Federal Employment Agency is required for this type of EU Blue Card. The Agency establishes whether the non-EU citizen is employed on terms less favorable than otherwise apply to comparable German employees.

As for qualified employees with a university degree, the comparability of the Chinese university degree must be safeguarded (please see section 2.2. above for further information on the procedure). The EU Blue Card is only open to employees with a local employment relationship in Germany. It does not apply in cases of posting a Chinese employee to Germany by a Chinese employer.

Once a German EU Blue Card is obtained, holders can receive a permanent settlement permit within 33 months. This period may even be reduced to 21 months in instances where a specified German language aptitude level can be established.

2.2.4. Contracts for supply of goods to be produced/manufactured

In some cases of contracts for the supply of goods to be produced or manufactured (Werklieferungsvertrag), Chinese employees do not require a residence permit, but a Schengen visa is sufficient for the work stay in Germany. This applies to **short-term secondments** for a period of up to 90 days over a total period of twelve months for the purpose of:

1. Setting up and installing machinery, facilities or electronic data processing programs for commercial purposes that have been manufactured by and ordered from the Chinese employer. This exemption is also applicable to giving operation instructions, maintaining or repairing these items,
2. Technical acceptance or receipt of operating instructions for machinery, facilities or other goods purchased in Germany,
3. Dismantling purchased, used machinery or facilities for the purpose of reinstallation in China,
4. Installing, dismantling and attending to trade fair stands of the Chinese employer or of other Chinese companies, or
5. Completing in-house training course in the context of export and licence agreements.

Cases no. 1 and 3 above require a prior notification of the intended employment with the German Federal Employment Agency.

Long-term secondments involving these activities require a residence permit including a Federal Employment Agency approval. The residence permit can be issued, if an employee is posted to Germany by the Chinese employer for a period of up to three years for the purpose of:

1. Setting up and installing machinery, facilities or electronic data processing programs for commercial purposes that have been manufactured by and ordered from the Chinese employer. This exemption is also applicable to giving operation instructions, maintaining or repairing this kind of machinery, facilities or electronic data processing programs,
2. Technical acceptance or receipt of operating instructions for machinery, facilities or other goods purchased in Germany, or
3. Dismantling purchased, used machinery or facilities for the purpose of reinstallation in China.

2.2.5. Scientific research personnel

Chinese scientists have different ways to get a residence permit in a simplified way:

- German residence permit according to the German Residence Act
- Residence permit for mobile researchers within the EU
- Short-term mobility of researchers with specific residence permits of other EU member states

As an alternative to an EU Blue Card, a specific kind of residence permit without involvement of the Federal Employment Agency is available for scientists who conduct research projects with a research institution approved by the German Federal Office for Migration and Refugees. In other cases, the public or private research institution must conclude a hosting agreement with the scientist containing among other things:

- Commitment of the scientist to carry out the research project and the duty of the institution to employ the scientist for this project,
- Dates of beginning and expected end of the project,
- Legal relation between institution and scientist, e.g. scope and extent of the activities or wage of the scientist (livelihood must be secured),
- Clause rendering the hosting agreement invalid if no residence permit for research purposes is being granted,
- Intended stays in other EU member states in the course of short-term mobility of the researcher.

The research institution must undertake to bear any costs in case of an unlawful stay in an EU member state.

The residence permit is granted for at least one year, unless the research project is for a shorter period.

Chinese researchers holding a residence title according to the European Directive 2016/801/EU issued by another EU member state may conduct research in Germany (without a German residence title) for up to 180 days in any 360-day period. However, a prior notification to the German Federal Office for Migration

and Refugees by the German host institution is necessary. For longer stays within a year, this specific category of researchers can apply for a "residence permit for mobile researchers".

Also for Chinese scientists intending to work at German universities and R&D institutions which are not among the institutions mentioned above, there is a possibility of applying for a residence permit as employees without the necessity of involving the German Federal Employment Agency. For short-term stays of up to 90 days within twelve months, these scientists are exempted from the residence permit requirement and can enter and work in Germany with a Schengen visa.

In exceptional cases, the German Residence Act sees the possibility to grant a permanent settlement permit for highly qualified researchers right from the beginning. According to the German Residence Act, this may be the case e.g. for teaching or scientific personnel in prominent positions.

2.2.6. Staff exchange

A residence permit for employees may be obtained for stays of up to three years by Chinese nationals, if they participate in a staff exchange of their international company (group). The employees must have a university degree (or comparable qualification). According to the German Federal Employment Agency, either the employment relationship in China can be maintained or a local German employment relationship is concluded during the period of the staff exchange. In any case, as usual the Federal Employment Agency checks the comparability of the employment conditions. Employees of the German company (group) must in return be sent to the associated Chinese company (group) during the staff exchange.

Due to the similarity between this category and the intra-corporate transfer of employees, also an ICT Card could be considered as a suitable option. In contrast to the staff exchange, the ICT Card can also be applicable to unidirectional secondments. However, the ICT Card is limited to managers, specialists and trainees. It also requires a previous job tenure in China of at least six months.

2.2.7. Business visitors

Chinese business visitors often benefit from an exemption of residence permit requirements, especially for stays of up to 90 days within any 180-day period in order to

- conduct contract negotiations in Germany for their Chinese employer or supervise the fulfillment of a contract, or
- set up, operate or supervise a business unit in Germany for their Chinese employer.

Also Chinese nationals employed abroad by a German company can benefit from this easement, if they are posted to Germany for this short period. A Schengen visa is sufficient in these cases. On the contrary, the fulfillment of a service contract is usually not regarded as a business trip, but a work stay requiring a residence permit (unless other exemptions apply, please see sections 2.2.1. to 2.2.6. above). This may lead to the situation that a Chinese employee sent to Germany for the fulfillment of a service contract, requires a national visa and a residence permit, while a Chinese employee supervising the contract fulfillment merely

requires a Schengen visa.

Setting up a company in Germany can also be accomplished with a Schengen visa in general. During the period of 90 days, all fundamental establishment activities can usually be performed. These include amongst others:

- Signing and notarization of articles of association,
- Application for registration in the commercial register (submitted by a German notary),
- Trade office registration (provided at least one representative on-site in Germany is available),
- Other preparatory activities in the company set-up phase (e.g. the opening of a bank account or the conclusion of lease contracts),
- Negotiation and conclusion of contracts with business partners

Setting up a company in Germany using a Schengen visa does however not alone warrant residence permit issue at a later date. If necessary, a national visa and a residence permit for self-employment or employment purposes should be applied for in due time. A residence permit must also be applied for if the proceedings for setting up a company exceed 90 days.

2.2.8. Chinese students/interns

As this guide concentrates on the posting of employees, it cannot give a full picture of the German law on residence permit requirements for students. The residence permit for students at German universities generally contains a right to carry out mandatory study-related trainings at German enterprises during the study period.

For preparatory practical training in a German enterprise before taking up the university studies, a separate residence permit has to be applied for. According to the Federal Ministry of Interior‘s Implementing Instructions on the Skilled Immigration Act, this can be done without any involvement of the German Federal Employment Agency.

Chinese students who are studying in China or have successfully completed their studies in the last two years may also apply for a **residence permit for the purpose of an internship** (or traineeship) in a German company to gain knowledge, practice and experience in a professional environment.

The procedure is carried out without an approval of the German Federal Employment Agency. The maximum duration of this kind of residence permit is limited to six months. The Chinese intern and the German company must conclude a training agreement, which provides for a theoretical and practical training including the following details:

- Description of the training program, including the educational objective or learning components,
- Duration of the internship as well as the internship hours,
- Placement and supervision conditions of the internship,
- Legal relationship between the trainee and the host entity.

The German host entity has to accept responsibility for the Chinese national throughout the stay in Germany and for up to six months after the end of the internship, in particular as regards subsistence and accommodation costs. The internship has to be in the same field and at the same qualification level as the university studies/degree in China. According to the German Federal Ministry of Interior, the comparability can be found out using the Anabin web portal of the German Central Office for Foreign Education (Zentralstelle für ausländisches Bildungswesen).

2.2.9. Advanced industrial training

For basic and advanced industrial training measures, a residence permit can generally be granted after approval by the German Federal Employment Agency only. If the vocational training is intended to lead to a skilled worker's qualification, the Chinese trainee may work up to ten hours per week not necessarily related to the training. The Agency generally demands a detailed training plan as well as the same wage levels for foreign and comparable German training participants. The trainee's livelihood must be secured. According to the implementing and administrative instructions of the Federal Ministry of Interior and the Federal Employment Agency, at least elementary German language skills (level A2) should be proven. For vocational trainings leading to a skilled worker's qualification, the trainee should have sufficient German language skills (level B1). The German company training the Chinese national must have the authorization for vocational training in Germany. Unlike in most cases of residence permits for skilled employment (see above), the Federal Employment Agency has to carry out a "priority check".

However, in many cases, there are exceptions to some of these requirements. For instance, if the training is necessary for the recognition of a professional qualification acquired in China and predominantly is conducted in an enterprise, **no priority check** is carried out by the German Federal Employment Agency. In this case, the residence permit is issued for up to 18 months, if further conditions are met. Among other things, an assessment of the Chinese professional qualification is necessary in order to find out which adaptation measures or further qualifications might be necessary to carry out regulated professions like e.g. electrical machine engineer (Elektromaschinenbauer). For further information on the recognition of different professional qualifications, please see the web portal Recognition in Germany.

The German Federal Government's web portal Make it in Germany provides detailed information on visas for vocational training purposes as well as on visas for the recognition of a foreign qualification.

Even a **Schengen visa** may be sufficient for short-term advanced industrial training measures of Chinese employees of an international company (group), if the German host entity is part of this company (group). The advanced industrial training must be in-house and must not exceed 90 days within twelve months. According to the German Federal Employment Agency, this residence permit exemption is also applicable, if the Chinese company (group) employee is the trainer or teacher of the in-house training.

Further the **ICT Card** provides a possibility in cases of mid-term intra-corporate transfers of Chinese employees for advanced industrial training. For this purpose the employees must qualify as "trainees" within the meaning of the German Residence Act and the European ICT Directive. This option applies to persons

with a university degree who are transferred by their Chinese employer to an associated German host entity within a trainee program for career development purposes or to obtain training in business techniques or methods. The traineeship must be paid. The German Federal Employment Agency is involved in the residence permit procedure, but does not carry out a priority check. The ICT Card for trainees may be issued for up to one year. For further information on the conditions for the issuance of an ICT Card and for the short-term mobility of holders of ICT cards of other EU member states, please see section 2.2. above. More detailed information on vocational training is provided in section 3.8. below.

2.3. Residence title for self-employment

For long-term stays, Chinese entrepreneurs managing a company on-site in Germany in a self-employed capacity require a residence permit for the purpose of self-employment.

Examples of persons considered to be self-employed:

- Entrepreneurs (including freelance professions),
- Partners in a partnership,
- Majority shareholders of a German GmbH who are also managing directors of the GmbH.

The residence permit may be granted if the planned business is expected to have a positive economic effect and there is an economic interest or regional need regarding the intended business. Secure financing must be in place, too. An individual assessment of the intended business project is made, taking into account, for instance:

- Viability of the underlying business idea,
- Entrepreneurial experience of the Chinese national,
- Level of capital investment,
- Effects on the employment and training situation.

A residence permit for the purpose of self-employment is limited in time for up to three years. A settlement permit (permanent) can be granted after three years if the investment project has been successfully realized and has stable income prospects.

Short-term occupations of up to 90 days in any 180-day period for Chinese self-employed executives are not considered as work stays – just as for employed executives. Consequently a residence permit is not needed in this case. A Schengen visa is sufficient.

2.4. Residence title for family members

Family members of Chinese nationals holding a long-term residence title may be granted a specific residence permit enabling a family re-union in Germany. This option is open to Chinese holders of for instance a residence permit, a settlement permit, an EU Blue Card or an ICT Card. Moreover, the Chinese national has to prove sufficient living space, financial resources and health insurance coverage for his/her family. Further conditions depend on the exact type of residence title of the Chinese national, the age and the

German language skills of the family members.

In general the spouse must be able to communicate in German on a basic level. There are however numerous exemptions from this requirement e.g. in the following cases:

- The Chinese national holds an EU Blue Card, an ICT Card or a residence permit for the purpose of research,
- The spouse shows a small demand for integrative measures, which is e.g. the case if the spouse holds an academic degree and does not need German language skills by law for working in Germany in his/her profession, or
- It is impossible or unacceptable for the spouse to start learning German prior to entering Germany due to particular circumstances of the case.

If a Chinese national holds a residence permit, the marriage must have existed prior to the issuance of the permit and his/her expected stay in Germany must exceed one year. Exceptions apply for e.g. EU Blue Card and ICT Card holders.

Children (under 18 years of age) of a foreigner can claim a residence permit if the parents e.g. hold a residence permit, an EU Blue Card, an ICT Card or a settlement permit and if the children relocate to Germany together with their parents. If an unmarried child subsequently joins its parents and is 16 years or older, the issuance of a residence permit generally requires German language skills or an education and the child's ability to integrate into the German society. However, this additional requirement does not apply if the parents e.g. hold an EU Blue Card, an ICT Card, a settlement permit for highly qualified foreigners, or specific kinds of residence permits for research purposes.

Deviating from these requirements, it is possible to obtain a residence permit as a family member in cases of special individual hardship.

Residence titles issued to family members according to the above mentioned procedures generally entitle the family members to work in Germany. Only in exceptional cases, work is not permitted to family members. This for instance applies to family members holding a Schengen visa while joining a Chinese national who is in Germany on a short-term mobility basis with an ICT Card from another EU country.

2.5. Residence title for temporary workers

Temporary workers are those employees who are made available by their employer (the lender - in most cases a temporary employment agency) to another company (the borrower) for a certain period of time. An employment relationship only exists between the lender and the temporary worker even though the borrower obtains an extensive right to direct the temporary worker. For further information please see section 3.7 below.

Hiring foreign temporary workers is quite restricted in Germany. Foreign temporary workers including temporary workers from China can only obtain a visa and a residence and work permit if no approval of the Federal Employment Agency is required. This is the case, for example, for highly qualified temporary workers who fulfil the prerequisites of an EU Blue Card or for scientists intending to work at German universities or R&D institutions or for teaching staff. A further exemption is made for intra-corporate transfers of temporary workers from a foreign entity to a German entity both belonging to the same group of companies for example in the context of staff exchange or in the context of foreign projects (please see section 2.2.6. above).

2.6. Rights related with a residence permit (right of travelling and other rights)

A residence permit always entitles the holder to enter and stay in Germany. Beyond that, every residence permit must indicate whether the pursuit of an economic activity in Germany is permitted. Some residence permits entitle the holder to take up an employment, other residence permits only allow self-employed work, and some permits allow both. Which rights are related with a residence permit depends on the legal ground it is based on.

However, all residence permits expire if the holder leaves Germany for a reason which is not of a temporary nature or if the holder leaves Germany for several months and fails to re-enter it within a specified period. Generally, holders of a residence permit need to return to Germany within **a period of six months**. Holders of an EU Blue Card may leave Germany **for up to 12 consecutive months** without their residence permit expiring. In justified cases, the immigration office can set a longer period upon the holder's application.

2.7. The consequences of non-compliance

The consequences of non-compliance are not only serious for the individuals but also for the companies.

2.7.1. Individual

Chinese nationals without a valid residence and work permit may not work in Germany. If they do work anyway, they have a claim to be paid for their work by the employer. However, an employee who worked without the required residence and work permit would be liable to prosecution, might be fined and might be forced to leave Germany.

2.7.2. Company

Employers may only employ third-country nationals who hold a residence and work permit which exactly allows the performed activity. Employers are obligated to check this and to store a copy of the residence and work permit in electronic or paper form.

Fines of up to EUR 500,000 or even imprisonment can be imposed against the company and/or its managing directors or its board of directors in case of a violation. Companies also face the risk of being excluded from public procurement and the risk of future residence and work permits for foreign employees being refused in view of such violations.

3. Employment and labor law

3.1. Contract structure

3.1.1. Employer party: German and/or Chinese entity

German employment law does not set any restrictions as to the employer party: Any natural person or corporate entity, based on German or foreign law, is entitled to employ others on German territory. Unlike in other jurisdictions, there is no requirement of a formal employment contract with a German entity. International assignments can be effected on the basis of two different contractual schemes. The employee may be posted solely on the basis of his original employment contract, advisably amended as far as the terms and conditions of the international assignment are concerned. Or alternatively, if the posting takes place within the same international group, the employee is given a new contract with the local entity, the original contract being suspended for the time of the assignment.

3.1.2. Applicable law

The rules on conflict of laws or private international law regarding contractual obligations are contained in the "Rome I-Regulation", an Act of European Union legislation. Its scope, however, is not limited to the laws of the EU member states. It applies to all international cases, and any law specified by this Regulation shall be applied whether or not it is the law of a member state, thus forming the international legal background for employees posted from China to Germany. It sets the rules a German Labor Court has to apply if a cross-border case comes before it.

The Rome I-Regulation, in accordance with a long tradition of private international law, is based on the principle of the parties' freedom to choose the applicable law. The parties to the employment contract are free to choose any law they prefer; the choice not being limited to either German or Chinese law. In default of an expressed or implied choice of law, the employment contract shall be governed by the law of the country in which or, failing that, from which the employee carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country; "temporary" meaning that the employee is expected to resume working in the country of origin after carrying out his tasks abroad. Hence, if a Chinese employee posted to Germany is to return to China eventually, the habitual workplace, for private international law purposes, remains China. This means that the contract of an employee employed by a China based entity and sent temporarily to Germany is basically governed by Chinese law, albeit the work is carried out on German territory. Chinese law in this case is the objectively applicable law (which changes only in case the Chinese employee is to remain permanently in Germany and/or employed by a German entity). If the parties have chosen a law which is not the objectively applicable law, the choice has only limited effects: It cannot set aside the cogent provisions, i.e. provisions that cannot be derogated from by agreement, which are more favourable to the worker and would have to be applied if no choice had been made. E.g., if the parties of a temporary assignment from China to Germany chose Swiss law, this would not have any effect on the applicability of German overriding mandatory provisions or of Chinese employee-favourable law, leaving only

a narrow field of application for the chosen (Swiss) law. Therefore, it is advisable to choose the law which is also the objectively applicable law.

However, employment law being a system prevalently designed to safeguard the workers' rights and to afford them protection, there are heavy restrictions of the general principles set out above. A set of rules of German law apply regardless of the law chosen by the parties or the law of the habitual workplace. The most important of these so-called overriding mandatory provisions are contained in the Posted Workers Act (Arbeitnehmer-Entsendegesetz) and regard the following matters: remuneration, including overtime rates; minimum paid annual holidays; maximum work periods and minimum rest periods; the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings; health, safety and hygiene at work, including the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work; protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; gender equality and other provisions on non-discrimination; and allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons. These rules can be set by state law, but also by a collective labor agreement (Tarifvertrag) which will be binding on all employers, including foreign ones, if declared so by the Federal Ministry of Labour. This is of particular importance in the case of remuneration which may go beyond minimum wages, extending to the whole system of remuneration, depending on the respective industry branch. Allowances specific to the posting shall be considered to be part of the remuneration, unless they are paid in reimbursement of expenditure (costs of posting, e.g. regarding travel, board, lodging). If it is not clearly determined which elements of the allowance are paid in reimbursement of expenditure, then the entire allowance shall be considered to be paid in reimbursement of expenditure (and hence do not qualify as part of the remuneration).

In 2020, another restriction was introduced by the Posted Workers Act: Where the effective duration of a posting exceeds 12 months (on notification of the competent authorities by the employer, the period extends to 18 months), in addition to the matters above mentioned, the whole German labor law, including collective agreements declared universally applicable, applies to the employment relationship. The only exception are the rules on the conclusion and termination of the employment contract, including non-competition clauses, and supplementary company pension schemes, which continue to be governed by the law chosen by the parties or the objectively applicable law according to the Rome I-Regulation. This being a very narrow field, it is obvious that after 12 (18) months of posting, there is not much left of the principle of the parties' freedom to choose the applicable law. There are specific rules on the calculation of the period of the posting. E.g. where a posted worker is replaced by another posted worker performing the same task at the same place, the period of employment of the replaced worker is added to the period of employment of the replacing worker.

German law courts are granted jurisdiction for claims based on the Posted Workers Act.

3.2. Mandatory and common employment conditions in Germany

3.2.1. Written contract

In Germany, the **principle of freedom of form** applies to the conclusion of employment contracts**.** Thus employment contracts can also in principle be concluded orally. Employees nevertheless always have an entitlement to the employer taking down in writing, signing and providing the significant terms and conditions (names of the parties, commencement of employment, work location, job description, salary, working hours, holidays, notice periods, general reference to collective labor agreements, operational agreements or service agreements that apply to the employment contract) not later than one month after the agreed commencement of the employment relationship, even in the event of oral contract conclusion pursuant to the Law of Proof of Substantial Conditions for an Employment Relationship (Nachweisgesetz). Against this background, and for reasons of proof, it is common practice in Germany that contracts are concluded in writing. If a limited-term employment contract is to be concluded (please see section 3.2.2 below), the clause relating to the limit must be concluded in writing.

The employer must consider carefully the extent to which it specifies the working conditions in the contract – particularly in relation to the content, location and time of the performance of the work. In principle, the employer has the authority to issue instructions to the employee. The employer may generally determine and amend the content, location and time of the performance of the work at its reasonable discretion. However, the more accurately these points are regulated in the employment contract, the smaller the room for maneuver is for the employer to exercise its right to give instructions and the more likely it is that a consensual amendment to the contract or – if the employee does not agree to the amendment of the contract – a termination with the option of altered conditions of employment (please see section 3.2.8 below) will be necessary. If the employer has the authority to issue instructions, it must exercise this at its reasonable discretion, i.e. balancing its interests with those of the employee.

3.2.2. Limited-term or permanent employment contract

As a rule, under German law, **employment contracts** are **permanent** in nature. A **limited-term employment contract** is however possible, though only under certain conditions, as regulated in the Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz). The advantage of limited-term employment contracts is that they allow employers greater flexibility, which the latter would not otherwise enjoy due to the very clearly defined protection against dismissal in place in Germany.

There are two types of contract term limitation: limitation by time and limitation by purpose. A time limitation exists if the term of the employment contract is determined according to a specific calendar term. For limitation by purpose, the term of the employment contract depends on the type, purpose or nature of the work to be performed.

The following special features apply to a limited-term employment contract:

Limited-term employment contracts are only valid, if there are either objective grounds for the limitation

or statutory law allows for a limited-term employment contract.

- A (non-exhaustive) list of **objective grounds** can be found in the Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz). The Federal Parental Benefit and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz), Caregiver Leave Act (Pflegezeitgesetz) and the Act on Limited Employment Contracts in the Scientific Sector (Wissenschaftszeitvertragsgesetz) contain complementary regulations. In practice, the most frequently used objective grounds are limited project durations and where an employee stands in for a permanent member of staff for a limited time. A project limitation exists if – though only temporarily – there is an increased demand for labor during the term of the project. A stand-in limitation is assumed if an employee temporarily replaces another one (e.g. as a result of parental leave). In this respect, the employee standing in need not take on the tasks of the absent employee. It is sufficient for there to be a causal link between the temporary recruitment and the temporary demand for extra manpower connected to the absence of the relevant employee.
  In the case of limitation for objective grounds, there is no fixed upper time limit, whose exceedance would result in the limited-term employment contract being inadmissible. However, with an increasing duration or a rising number of extensions, the requirements for the justification for the existence of objective grounds are raised.

- In the absence of objective grounds, an employment contract may, pursuant to the Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz), in general be fixed to a term of up to two years. Up to this total term, a maximum of three extensions of a time-limited contract is possible. However, an employer may not limit a contract without objective grounds, if a limited or permanent contract has already been concluded with that employer before. Collective labor agreements may differ from the above in terms of the maximum duration of the limitation and the number of extensions permitted.
  In the starting-up phase of a company, the duration of a limitation without objective grounds is extended to four years. It is important to note, however, that this does not apply to start-ups founded in connection with the legal restructuring of companies and groups of companies.
  If the employee has passed the age of 52, under certain additional conditions, a limitation without objective grounds may also be permitted for a period of up to five years.

A **limited-term employment contract ends** upon expiry of the agreed period of time (limitation by time) or when the given purpose is achieved (limitation by purpose). For limitation by purpose, there also needs to be written notification given to the employee by the employer regarding the achievement of the relevant purpose; the employment contract may not end earlier than two weeks after such notification is given.

An ending of the limited-term employment contract by ordinary termination is excluded unless this possibility has been explicitly agreed upon conclusion of the contract. Extraordinary termination remains possible at any time. See section 3.2.8 below with regard to the conditions of termination.

An **agreement on a limited-term employment contract** requires the **written form** in order to be valid, though this includes the electronic form pursuant to the German Civil Code (Bürgerliches Gesetzbuch). The objective grounds, if any, need not be set down in writing. On the other hand, if limitation is due to purpose, such purpose must be specified in writing. The general rules on form apply otherwise to the employment contract (please see section 3.2.1 above).

If the employer does not keep to the written-form requirement of the agreement on a limited-term employment contract, the **legal consequence** is the conclusion of a permanent employment contract. The same applies if the limitation is ineffective or if employer and employee continue the employment after the agreed end of the employment contract. The employee may file suit against an ineffective limitation of contract. It is irrelevant in this respect whether the limitation is ineffective due to lack of written form or due to other reasons. The action is to be submitted to the Labor Court within three weeks after the agreed end of the employment contract.

3.2.3. Working hours and rest hours, overtime premiums

With regard to working hours, it is necessary to distinguish between **working hours within the sense of occupational health and safety legislation** (= how long and on what days may an employee work to optimally protect his/her health) and the maximum **working hours within the sense of legislation on remuneration** (= what working hours must an employee work and how is he/she paid for that time).

Working hours within the sense of occupational health and safety legislation: The regular weekly working hours, the maximum daily working hours, rest periods and the prohibition of work on Sunday and public-holiday are legislated in Germany by the Hours of Employment Act (Arbeitszeitgesetz). Young employees (15 to 18 years) are particularly protected through the Young Persons' Protection in Employment Act (Jugendarbeitsschutzgesetz).

According to the Hours of Employment Act, working hours are generally limited to eight hours per work day (Werktag). It may be extended to up to ten hours, if, within six calendar months or within 24 weeks (the so-called balancing period) an average of eight hours per work day is not exceeded. An extension of the working hours to over ten hours may occur only in exceptional cases provided for by law, for example, in the event of emergencies. Work days are deemed to be the days from Monday to Saturday inclusive, with the exception of public holidays (please see section 3.2.6 below). The regular weekly working hours may therefore not generally exceed 48 hours, according to the Hours of Employment Act.

Working hours is the sum of time from the beginning to the end of work, with the breaks deducted. Working hours do not include the time when employees travel to and from work ("**travel time**"). This is different to when the employee travels for operational reasons or he/she is provoked into traveling to another place of business or to customers, for operational reasons. Inactivity due to operational reasons also counts as working hours, as does the time in which the employee is at its place of work waiting for instructions from the employer (**readiness for work**). The same applies to **readiness for service**. This is the time in which the employee – outside his/her regular working hours and at a place determined by his/her employer – waits,

and must commence work without delay as required. The opposite is **standby**, which does not constitute "working hours" within the meaning of the Hours of Employment Act. "Standby" is the time during which the employee must remain reachable outside his/her regular working hours, though it is not determined where he/she must be located. With "standby", only that time during which the employee is working counts as working hours.

Employees are legally allowed a **break** of at least 30 minutes for a period of work of more than six hours. For a period of work of more than nine hours the break time is increased to at least 45 minutes. The employer may specify when the breaks are taken. The time frame for the breaks must be defined in advance without observing any formal requirement. Any existing relevant works council has the right to co-determination of the time frame.

After the end of daily working hours, the employee is in principle entitled to at least eleven hours of uninterrupted **rest**, i.e. a period in which he/she is not working. For certain areas (e.g. hospitals or restaurants) there are statutory exceptions. In these cases, the rest period may be reduced temporarily, though this must then be compensated with a longer rest for later. If the rest period is interrupted by work, it is to be granted to the employee once again (at full length) after the end of the period of interruption.

In general, no work is permissible on **Sundays and public holidays** (list of public holidays in Germany given under section 3.2.6 below). There are however statutory exceptions to this rule. In some occupations, work is generally allowed on Sundays and public holidays due to the nature of the work which is typically done on these days (e.g. restaurants, trade fairs, maintenance of equipment). The employer may, in addition, have approval issued in advance by the relevant authorities to permit work on Sundays and public holidays. A further exception is deployment in the event of an emergency or in exceptional cases. If an employee works on a Sunday, exceptionally, he/she is entitled to a day off in lieu. If no exception applies and if an employer employs employees on a Sunday or public holiday, it may be fined or be subject to punishment of up to one year imprisonment.

Employers are obliged to record when and for how long each employee works beyond the daily work period of eight hours. The employer is entitled to transfer this obligation to the employee. Offenses against the Hours of Employment Act are deemed to be administrative offenses, which may incur a fine of up to EUR 15,000 (EUR 30,000 as of 2021).

Working hours within the sense of legislation on remuneration: The duration of working hours, i.e. how long the employee must work for the contractually agreed remuneration, is generally specified in the employment contract. In sectors subject to collective labor agreements, (usually weekly) working hours is regulated by collective labor agreements. For example, the collective labor agreement for the metal and electrical sector in North Wuerttemberg/North Baden stipulates a working time of 35 hours per week. The employer shall, insofar as not otherwise regulated by contract and/or collective labor agreement, determine the location of the working hours in the framework of its authority to issue instructions. Any existing relevant works council has the right to co-determination in this respect, however.

The convention in Germany is for full-time employment. **Full-time** designates working hours which are standard in the relevant establishment, pursuant to employment contracts or collective labor agreements.

According to the law on part-time and limited working, the employee has a right to permanently reduce his/her working hours in firms with more than 15 employees, if the employment contract has lasted for at least six months. The employee must apply to the employer to work **part-time**, whereby he/she will assert the reduction of working hours and the extent of the reduction. He/she must state the desired distribution of working hours in the application. The application must be submitted at least three months before the desired start of the reduced working hours. The employer must approve the application, unless there are operational reasons against it, such as disproportionate handover time. Since a strict benchmark applies to these operational reasons, the employee's application to work part-time often prevails.

On-call work constitutes a special type of part-time work, which is typical e.g. in the retail sector. In this case, the employer and employee agree that the employee shall perform his/her duties according to the volume of work. The duration of the weekly and daily working hours must be set; otherwise the weekly working hours are deemed to be 20 hours. If a minimum weekly working time has been contractually agreed, the employer may only call up an additional 25 percent of the weekly working time. If a maximum weekly working time has been fixed, the employer may only call up to 20 percent of the weekly working time less. If the duration of the daily working hours is not set, the employer must call on the employee to perform work for at least three consecutive hours. The calling up of the employee, including notice of the location of the working hours, is to occur four days in advance. Collective labor agreements may deviate from these legal regulations.

The usual working-time models are **fixed working hours, shift work (alternate shift, day shift model), flexitime** and **trust-based working hours**. In a **fixed working** schedule the employee has a fixed beginning and end to his/her working day, typical in service occupations. For **shift work**, the employer determines that the employees undertake their work tasks in alternating shifts, at specified times. This working model takes place in facilities which operate day and night. For **flexitime**, employees must generally be at the workplace during a certain core working hours, but may themselves determine the beginning and end of their work during a flexible period in the morning and afternoon, which is typical in white-collar jobs. With **trust-based working hours**, the employer does not record the working hours effected; this responsibility is instead placed on the employee, which take on responsible roles. The employee can thus freely determine when and for how long he/she works. It is important to note however that the employer must be cognizant of the actual time worked due to the maximum working hours specified in occupational health and safety legislation. In this respect it should be ensured that the employee notes if he/she works more than eight hours in one day.

The employee may **work overtime**. This is the time in which the employee works beyond the performance specified in his/her employment contract or in the relevant collective labor agreement and the employer has ordered or approves this. The limit is the maximum working hours specified in occupational health and safety legislation. Overtime is in principle compensated by time off in lieu, or by remuneration. Premiums

for the fulfilment of overtime are not regulated by law. Often there are corresponding regulations in collective labor agreements, however.

The following special cases are to be observed:

- For the periods of **readiness for service and standby**, a lump-sum remuneration may be agreed upon.
- Employees who work the **night** shift or who work at night for at least 48 days each calendar year are particularly protected by law. Night time is generally deemed to be between 11 pm and 6 am. In particular, employees who work at night have a right to regular medical examinations. In addition, the extension of their working hours to beyond eight hours a day is only possible if, in a period of one calendar month or four weeks, the average working hours does not exceed eight hours per work day; night workers are thus subject to a shorter "balancing" period. Furthermore, those employees working at night on the instruction of their employer shall be entitled to a reasonable number of paid days off, or a remuneration premium, chosen by the employer.
- In the case of the employment of **young people**, which means people between 15 and 18 years of age, there are many special regulations. To name but a few: Young people may in principle only work five days a week; Sunday work is further restricted and young people must not work for longer than four hours without a break.

3.2.4. Remuneration, minimum wages pursuant to the Minimum Wage Act and notifications, currency requirements

Remuneration is paid by the employer on the basis of the performance of work. The level of remuneration shall be determined in principle according to the employment contract and where appropriate, in accordance with the provisions of the relevant collective labor agreement. The collective labor agreements usually set a remuneration system in which certain activities are assigned to certain pay groups. Depending on the role, employees are then grouped into a pay group. If an employee moves to another role – in particular a higher one – he/she is accordingly assigned to a different group. It is important to note that the works council has a right to co-determination, both in the original assignment and any re-assignment to pay groups.

Employees may not be discriminated against in terms of remuneration. In Germany, discrimination on the grounds of racial or ethnic origin, sex, religion or belief, disability, age or sexual identity is fundamentally prohibited. An employer may therefore not pay a female employee less than a male employee on the grounds of sex. Pursuant to the Act on Transparency of Pay (Entgelttransparenzgesetz), in companies employing 200 and more employees each employee has the right to request the disclosure of the median monthly salary of employees of the opposite sex within their comparison group.

Employees are usually remunerated for the time worked, with hourly wages, weekly wages or monthly salaries being common. In addition to this time-related wage, the following remuneration forms are possible, by way of example:

- **Target agreements** are often concluded between employee and employer. In a target agreement, a bonus payment is paid on a specified date in addition to the agreed time-related wage, whereby the grounds and amount of the bonus is paid dependent on whether the set targets have been achieved.
- In addition to the time-related wage, employees may also agree on a share of the profits of the company. Such **profit-sharing** is agreed particularly with employees whose activities make a significant contribution to the success of the company.
- Field staff often agree to receive – in addition to a **fixed salary,** which is a fixed monthly amount – **commission** by way of an incentive for the achievement of the turnover target.
- In some sectors, **vacation pay** (for details please see section 3.2.5 below) constitutes a common special payment.
- Likewise, it is usual in some sectors that a **Christmas bonus** is paid. This is a bonus in addition to wages, on the occasion of Christmas. The Christmas bonus is normally paid with the November salary.

With regard to the level of remuneration, there are two limitations:

- In Germany there is a statutory **minimum wage**. Regardless of whether lower remuneration is agreed in any employment contract, the employee is entitled to payment of the minimum wage. From 1 January 2021, this will be EUR 9.50 per hour worked. It will then gradually increase: from 1 July 2021 to EUR 9.60, from 1 January 2022 to EUR 9.82 and from 1 July 2022 the minimum wage will be EUR 10.45. The level of the minimum wage is re-assessed every two years. The wage stipulated in any collective labor agreement may not be lower than the minimum wage.
- In addition to the minimum wage, the **violation of bonos mores** is considered to be a defining limit. A wage is deemed to violate bonos mores if the remuneration for labor is one third under the collectively bargained wage for the relevant sector, and there are no special reasons to justify this deviation.

Remuneration is generally to be calculated and paid in EUR. However, a different currency may also be agreed in the employment contract if this is in the interest of the employee or corresponds to the nature of the employment contract. Should there be a desire to use a currency other than the euro (EUR), it is recommended that legal advice be sought.

It is not permitted to compensate employees exclusively by the transfer of goods produced by the employer. **Remuneration in kind** may only be used as part of the remuneration agreed upon, if this is in the interest of the employee or corresponds to the nature of the employment contract.

The employer may grant employees, in addition to their compensation, an employer-financed **company pension**. Even if the employer offers no employer-financed company pension, employees have an entitlement under the Act for the Improvement of Company Pension Plans (Betriebsrentengesetz) to four percent of their pay being used for an occupational pension scheme (employee-financed company pension).

In Germany, the principle of "no work, no wage" applies. There are however exceptions from this:

- The employee is entitled to his/her wage if it is technically impossible or unreasonable to work. As the employer bears the operating risk, it is generally liable in such a case for the wage for the time in which the employee is not working. Example: No production is possible due to lack of raw materials.
- The employer also bears the economic risk. Therefore, the employer must pay the employee if the latter is able to perform the work, but it is not practical for the employer for him/her to do so for economic reasons. For example, this situation arises if a lack of orders renders production economically futile.
- The employee retains his/her entitlement to wages if he/she is prevented from performing work for a relatively non-significant time for a personal reason for which the employee is not responsible. This is the case, for example, if the employee does not work due to the sudden death of a close relative.
- If there is no work as a result of statutory public holidays, pursuant to the Continuation of Remuneration Act (Entgeltfortzahlungsgesetz) the employer must pay the normal wage which it would have paid without the public holiday. The claim exists only in the case of statutory public holidays (please see section 3.2.6 below). If the employee was not due to work on the day of the public holiday, he/she has no entitlement to the relevant wage.
- Reference is made to section 3.2.7 below with regard to the continued remuneration obligation in the case of illness, as well as to the special cases of maternity leave, parental leave and caregiver leave.

3.2.5. Length of holidays, holiday pay and vacation bonus

Every employee has a **right to at least 24 working days' (Werktage) vacation** per calendar year. The explanation of "work day" (Werktag) can be found in section 3.2.3 above. With regard to this provision, the law assumes a six-day working week. If the regular weekly working hours of the employee is less than six days, the vacation entitlement reduces accordingly. The amount of vacation is then specified in working days (Arbeitstage). For example, an employee working five days a week has a minimum entitlement of 20 working days' vacation. An upward deviation from this can be effectively agreed; in many sectors, six weeks' vacation per calendar year is common. An agreement which deviates from the statutory amount in a downwards direction is ineffective. Based on new court rulings, it is also recommended that employers instruct employees in good time before the end of the calendar year to take any vacation that has not yet been taken. Severely disabled people and young people also have a right to extra vacation, which is dependent on the working hours of the severely disabled employee, and the age of the young person.

The full vacation entitlement arises for the first time once the employment contract has lasted for six months, whereby this regulation may be waived according to the employment contract. The vacation must be the sole reason for the absence from work; there must therefore be no other priority reason for exemption: If an employee falls ill during the vacation such that he/she is incapable of work, those days covered by a medical certificate proving of incapacity for work do not count towards the vacation.

Employees must **request vacation** from their employer; self-authorized vacation is not permitted. If the employer has approved the vacation, it has no right to call the employee back from vacation. Employees may generally freely choose when they take their vacation. This does not apply only if there are urgent operational issues or the vacation requests of other employees, whose requests are to be preferred for social reasons (e.g. because they have children and thus are tied to school holidays), conflict with the given employee's request. If urgent operational issues exist, the employer may also arrange for vacation close-downs, during which all work in the establishment is suspended and the employees are forced to take vacation. It is important to note here, however, the works council's right to co-determination.

Since **the purpose of the granted vacation** is to compensate for the burdens of work and thus the health of the employee, vacation days should be taken together, as far as possible, and be granted at regular intervals. In addition, all activities contrary to the purpose of vacation are to be refrained from; external employment is in particular forbidden during the vacation period.

Vacation is generally to be taken in the year for which it is granted. If the employee cannot fully utilize all his/her vacation due to urgent operational reasons or personal reasons, the remaining vacation days may be rolled over to the following calendar year. No declaration of rollover is required. The vacation must then be taken in the first three months of the following calendar year; otherwise the leave entitlement shall lapse. However, where an employee is declared unfit for work over the long term, the leave entitlement shall lapse 15 months after the end of the calendar year in which the vacation entitlement has arisen.

During vacation, the employee is entitled to **continued remuneration**. The calculation of the vacation pay is dependent on the average earnings of the last 13 weeks. In addition, an entitlement to the granting of additional **vacation pay** may arise from the employment contract, a works agreement or from a collective labor agreement.

The employee is entitled to the granting of **payment in lieu of vacation** only if the employment contract ends without it being possible to take the remaining vacation due. Otherwise, granting of vacation is preferred over remuneration.

In addition to the vacation, employees in some federal states are also eligible for the granting of paid **training leave**.

An entitlement to **special leave** may arise in certain specified cases from employment contracts, a works agreement or from collective labor agreements. This constitutes an **unpaid exemption** only; no entitlement to continued remuneration is derived therefrom.

The employee need not generally work on **public holidays**, please see section 3.2.3 above. Nevertheless, he/she has an entitlement to **continued remuneration** against his/her employer. He/she receives the same wage which he/she would have received had he/she worked on that day.

3.2.6. Public holidays in Germany

Federal States	New Years Day, Jan. 1st	Epiphany, Jan. 6th	Int. Womens Day, March 8th	Good Friday + Easter Monday	Labor Day, May 1st	Ascension Day	Pentecost Monday	Corpus Christi	Augsburg Peace Fest, Aug. 5th	Assumption Day, Aug. 15th	World Childrens Day, Sept. 20th	Reunification Day, Oct. 3rd	Reformation Day, Oct. 31st	All Saints Day, Nov. 1st	Day of Repentance	Christmas, Dec. 25th + 26th	Sum:
BW																	12
Bavaria									A	X							12-14
Berlin																	10
BB																	10
Bremen																	10
Ham-burg																	10
Hessen																	10
Lower Saxony																	10
MV																	10
NRW																	11
RLP																	11
Saar-land																	12
Saxony								X									11 -12
Saxony-Anhalt																	11
SH																	10
Thurin-gia								X									11 -12

BW: Baden-Württemberg / BB: Brandenburg / MV: Mecklenburg-Vorpommern / NRW: North Rhine Westphalia / RLP: Rheinland Pfalz / SH: Schleswig-Holstein

X: Public holiday only in some areas of the Federal State. A: Local Holiday in the city of Augsburg.

The regulations of the federal state of the employee's place of work apply. If a public holiday occurs on a Saturday or a Sunday, the public holiday is not transferred to another date.

Source: GTAI research

3.2.7. Inability to work

The main case of inability to work is the inability to work due to illness. There are also other cases in which the employee is prevented from performing work: maternity leave, parental leave and the caregiver leave.

If an employee is ill, this does not mean that he/she loses his/her entitlements to wages. The Continuation of Remuneration Act (Entgeltfortzahlungsgesetz) stipulates in this respect that an employee who is unable to work due to illness retains his/her entitlement to receive wages for the period of his/her inability to work, for a period of six weeks. After the expiry of the six weeks, remuneration is generally discontinued. The employee will then receive sickness benefit from the statutory health insurance fund, which is generally 70 percent of the regular remuneration for work.

For the employee to retain his/her entitlement to wages despite illness, the following requirements must be met:

- The employment contract with the employee must be at least four weeks old ("qualifying period") for him/her to retain his/her entitlement to receive wages in the case of illness. However, this has no impact on the six-week period of continued remuneration (example: The employee is recruited on 1 July and is immediately taken ill. For the first four weeks, the employee has no entitlement to the continued payment of remuneration. After that, he has an entitlement to continued remuneration for six weeks).
- The employee must be unable to work due to illness. Minor illness is not sufficient grounds. This means that the performance of the work under the employment contract must be impossible or unreasonable for the employee as a result of the illness. The question of whether the performance of work is unreasonable varies from case to case. The performance of work is deemed to be unreasonable in particular, if a deterioration in the health of the employee is to be feared should he/she perform the work.
- The inability to work must not have been caused by the employee. This is the case when an employee deviates considerably from the behavior expected of a rational person acting in their own interest. Frivolous or deliberate behavior is required to fulfil the "self-caused" criteria (for example: a provoked fight).

The employer is also obliged, in the case of a renewed inability of the employee to work, to continue to pay the remuneration for work beyond the continued remuneration period of six weeks where:

- The employee has proven that the renewed inability to work is based on a different illness.
- The employee was not unable to work due to the same illness during the last six months.
- 12 months have passed since the beginning of the first inability to work due to the same illness.

In addition to these legal regulations, some collective labor agreements and works agreements stipulate further regulations.

The employer must continue paying remuneration at the level that the employee would have received had he/she been working. This does not include remuneration components paid to compensate actual disadvantages which are not incurred during a period of inability to work (e.g. overtime payments).

The employee has the duty to inform the employer of his/her inability to work and of the anticipated duration, without delay. This is generally to be done before starting work on the first day of the inability to work. Even if the employee does not immediately inform the employer of his/her inability to work, he/she does not lose the entitlement to continued payment of remuneration. His/her failure to do so may however justify the issuance of a warning, or, in the case of recurrence, a termination of contract (please see section 3.2.8 below).

In addition to the obligation to inform, the employee must provide evidence of the inability to work, if it lasts for more than three calendar days. On the fourth day of inability to work at the latest, he/she must produce a medical certificate of inability to work. If that day is not a normal working day (Arbeitstag) (e.g. a Sunday), the evidence may be submitted on the next working day. Only doctors may issue medical certificates of inability to work. They attest to an illness-related inability to work, and state how long this is likely to persist. The employer is also entitled to request a medical certificate of inability to work earlier than after the end of the third calendar day. This request does not need to be particularly justified, but it should not be arbitrary, vexatious or discriminatory. The requirement for the earlier submission of a certificate may also be agreed in the employment contract. If the employee is unable to work for a period longer than that attested on the certificate, the employee must submit a new medical certificate. This applies regardless of whether he/she is still in the continued-remuneration period of six weeks.

The following should also be noted on the subject of inability to work:

- During the period of inability to work, an employee must refrain from any activity which could delay recovery. However, there is no general obligation on the part of the employee to remain at home.
- If the employer has serious doubts as to the inability of an employee to work, it may demand that the statutory health insurance fund obtain the opinion of the “medical service” regarding the employee’s inability to work.
- The employer may not serve the employee with a written warning because the latter has fallen ill. Frequent short-term illnesses, one long-term illness or a permanent inability to work may however justify dismissal under certain conditions (please see section 3.2.8 below).

According to the Maternity Protection Act (Mutterschutzgesetz), expectant mothers have the right to not work in the last six weeks before birth and for at least eight weeks after the birth of a child. The employer does not need to continue remuneration during this time. Instead, the employee has an entitlement to maternity benefits paid by the statutory health insurance fund. Should the employee not be able to perform her work fully before the beginning of maternity period for reasons related to the pregnancy, the employer shall continue to pay remuneration without reduction.

Pursuant to the Federal Parental Benefit and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz),

the mother of the child may take **parental leave** after the end of the maternity period; the father may take this after the birth of the child. Generally, parental leave may be taken up until the completion of the third year of life of the child, although exceptions are possible. During the period of parental leave, the obligation to work is suspended and there is no entitlement to remuneration. Instead, the state will pay **parental benefits** for a period of 12 months. If both parents take parental leave, the entitlement to parental benefits increases to 14 months, whereby each parent must take at least two months parental leave (so-called "partner months"). The parental benefits amounts between EUR 300 and EUR 1,800, adjusted to the respective income.

Under certain conditions, employees may also work part-time during the period of parental leave; in this case they will also receive remuneration from the employers for their work.

Under certain conditions employees are authorized, under the Caregiver Leave Act (Pflegezeitgesetz), to take advantage of **caregiver leave** for the care of close relatives, e.g. parents, spouse or children. The employee is then released from his/her work duties for the period of the leave, but is generally not entitled to remuneration.

3.2.8. Termination of the employment contract/secondment

The **employment contract** is a **continuing obligation** which does not end automatically, but requires the fulfilment of the appropriate legal conditions for termination. A distinction is in principle to be drawn in this respect between a consensual ending of the contract through the conclusion of a limitation agreed in the employment contract or through a cancellation agreement, and a unilateral ending through dispute or termination.

An agreed **limitation** allows the employment contract to expire due to time or due to the achievement of the relevant purpose, please see section 3.2.2 above.

An employment contract can be ended by mutual agreement via a **cancellation agreement**. A cancellation agreement must be given in written form, whereby the electronic form pursuant to the German Civil Code (Bürgerliches Gesetzbuch) is excluded, unlike in the case of an agreement on a limited contract. In the event of non-compliance with the required form, the cancellation agreement is considered void, i.e. the employment contract continues. A cancellation agreement typically regulates at what point in time the employment contract is ended, how the continued payment of the remuneration is structured, whether the employee receives a severance payment, whether he/she is being released, and – if he/she is in possession of company property – when and where this must be returned.

An employment contract can, under certain conditions, **be disputed**. Grounds for dispute exist in particular if the employee deceives the employer before or upon conclusion of the employment contract regarding facts the employee discloses, such as presenting falsified certificates.

A **termination** is the unilateral ending of the employment contract. The requirements for a termination

differ depending on whether the employee or the employer gives notice thereof. An employee may terminate his/her employment contract in accordance with the applicable notice period, without giving a legitimate reason.

The employer may terminate an employment contract without legitimate reason only insofar as there is (at that point) no effective employment protection in favor of the employee. Otherwise, termination by the employer is only permissible if the latter can provide a legitimate reason for the termination. In particular, milder measures such as transfer to another role or a written warning, must have been exhausted or not have a chance of success. It may no longer be possible or reasonable for the employer to continue to employ the employee in the future on the basis of the employer's prediction (the **"prediction principle"**). The notice of termination must also be declared in writing and be received by the employee.

A so-called **ordinary termination** ends the employment contract after the expiration of a specific notice period. The notice period to be observed by the employer may be given in the employment contract, a collective labor agreement or the German Civil Code (Bürgerliches Gesetzbuch).

The employer must observe **general employment protection** pursuant to the Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz), if the employee either

- started his/her employment relationship prior to 1 January 2004 and the establishment regularly employs more than five employees (excluding persons employed for vocational training), or
- entered into employment on or after January 2004 and the establishment regularly employs more than ten employees (excluding persons employed for vocational training),

and has fulfilled a qualifying period of six months. Notice is only effective under this legislation if there is either **person-related, conduct-related or operations-related reason for termination**.

The grounds for a **person-related** termination must comprise a personal characteristic or ability of the employee. The most common cases involve the inability to work due to either frequent short illnesses or one prolonged illness. The requirements for a termination of employment due to illness are high: The employer needs to prove a negative forecast for the future with regard to the employee's recovery and a significant impact of contractual or operational interests. In addition, a weighing of interests is to be undertaken between employee's interest in continued employment and employer's interest in the termination of the employment contract. In particular, the length of service, age and family situation of the employee, as well as the question whether the illness is work-related, are to be taken into account.

A breach of primary or secondary obligations arising from the employment contract may justify a **conduct-related** termination. Examples in this respect are serious violations of contractual obligations, such as a breach of occupational health and safety regulations, a breach of the prohibition of competition or repeated absence from work without good reason. Conduct-related termination normally needs to be preceded by a relevant **written warning**. This warning should present the misconduct and the possible consequences (i.e. a termination of employment) of recurrence of similar misconduct. A written warning, however, is not required if the infringement was so severe that the bond of trust between employer and employee has

been permanently disrupted and its restoration cannot be expected. In addition, the employer has to undertake a weighing of interests between employee's interest in continued employment and his interest in the termination of the employment contract, in particular taking into account length of service, age and family situation of the employee on the one hand and the weight of the breach of contract, the resulting damage and, if applicable, prior written warnings on the other hand.

An **operations-related** termination comes into question if urgent operational requirements stand in conflict to the continued employment of the employee. This may for instance be the case if less labor than is currently present is needed for an unforeseeable period of time, and there is not the opportunity of further employment for all employees. For an operations-related termination the employer has to undertake a so-called **social selection**. The social selection's aim is to determine which employee will be relatively least hard hit by a termination, taking into account social criteria such as length of service, age, number of dependents and disability. It must be carried out among all comparable employees within the establishment, i.e. employees on the same hierarchical level who can exchange positions immediately or after a reasonable training period.

However, even outside the scope of the Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz), the employees are not completely unprotected. **Termination** must be **neither arbitrary nor abusive of the law**. Termination may not occur without objective reason, or due to a cause that was already known before the employee was recruited.

Employers and employees also have – given certain prerequisites – the possibility of **extraordinary termination.** Extraordinary termination is always **ultima ratio.** It can either be declared **without notice**, i.e. the employment contract ends upon receipt of the declaration of termination, or with a phase-out period. For extraordinary termination to occur, there needs to be a **good cause** which makes the **continuation** of the employment contract until the end of the ordinary notice period **unacceptable**. Good cause exists where there is a substantial violation of primary or secondary obligations under the employment contract; for example in the case of a work-related criminal offense, such as theft in the workplace. A weighing of interests is also to be performed in the case of extraordinary termination.

Extraordinary notice of termination must be given within a **period of two weeks**. This two week period begins as soon as the party entitled to terminate the contract becomes aware of the facts justifying the termination. If the other party does not receive the notice of termination within this two week period, extraordinary termination is excluded. The possibility of ordinary termination for the same reason, however, remains.

Some groups of people enjoy **special protection against dismissal**, in addition to the general protection against dismissal. In particular, severely disabled people, pregnant women and employee representatives enjoy such special protection.

- Before the ordinary or extraordinary termination of a **severely disabled person**, the employer must gain the prior consent of the disability integration office (Integrationsamt). However, the severely

disabled employee must have completed the six-month qualifying period in order to benefit from this protection. If there is a representative for severely disabled persons in the establishment, he/she is to be informed and consulted prior to termination. Without such consultation, the termination is ineffective. If the employer is not aware of the severely disabled nature of the employee concerned, then the employee must inform the employer thereof within three weeks following receipt of the notice of termination. More details on this topic can be found in the Social Security Code IX (Sozialgesetzbuch IX).

- The termination of an employment contract of a **woman during pregnancy** and up to the end of four months following the birth of a child, or following a miscarriage after the twelfth week of pregnancy, is not permitted. This applies equally to ordinary and extraordinary termination. There is the possibility that the termination may exceptionally be declared admissible by the competent authority. The Maternity Protection Act (Mutterschutzgesetz) has more detailed information on this topic.
- Under the Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz), the ordinary termination of a **member of the works council and certain other employee representative** bodies is excluded, both during his/her term of office and for one year following this. Extraordinary termination is possible with the consent of the works council.

In establishments in which a **works council** exists, the latter must be **consulted** before any termination; otherwise the termination is ineffective. The works council may object in writing to an ordinary termination within one week, and to an extraordinary termination within three days. If the works council does not make representation within the given period, it is deemed that consent to the termination has been granted. An objection by the works council has no impact on the effectiveness of the notice of termination; the employer must however forward the works council's ruling on the matter along with the notice of termination to the employee.

Special provisions relating to employment protection apply in the case of **mass redundancies**. Where there is a certain number of redundancies within 30 calendar days, the employer must report this to the Federal Employment Agency (Bundesagentur für Arbeit) in advance. This reporting obligation depends on the size of the establishment, the minimum number of redundancies is five. Once the report is submitted, a time limit of one month is set in motion, before the end of which the terminations will not become effective.

In the event of certain operational changes, a **social compensation plan** is to be drawn up, providing for the compensation or alleviating of the economic disadvantages incurred by the employee concerned as a result of the operational changes. More details can be found in the Works Constitution Act (Betriebsverfassungsgesetz).

The employee has the option of **appealing against unfair dismissal**. This must be submitted to the Labor Court within **three weeks of receipt** of the written notice of termination. After the expiration of this time limit, even a termination which is in itself legally invalid is deemed to be legally valid.

In addition to the notice of termination of employment, there is also the possibility of a **termination with the option of altered conditions of employment**. The primary goal of such a termination is the continuation of the employment contract under altered conditions. The notice of termination is used as a means of pressure and is only a secondary objective, if the employee does not wish to agree to the changes. The need for a termination with the option of altered conditions of employment follows from the fact that the right of the employer to issue instructions has its limits in the employment contract, please see section 3.2.1 above. A change to what has been agreed in the employment contract is suitable only in the event of consensual contract amendments or – in the case of a refusal by a contracting party – via a termination with the option of altered conditions of employment.

In the event of a termination with the option of altered conditions of employment, the employer shall offer the employee – at the same time as the notice of termination – the option of continuing the employment contract under altered conditions. The offer as well as the notice of termination must be in writing. The acceptance of the offer of changes may also be declared orally or tacitly by conduct implying an intent. Upon acceptance of the offer of altered conditions, the termination lapses. The offer of altered conditions may also be accepted by the employee under the proviso that the change in the employment conditions is, in their view, socially unjustified. In this case, the employee must file suit at the Labor Court for a contract amendment claim, focused on the ascertainment that the change in the employment conditions is socially unjustified or otherwise legally invalid. If this is not done, the proviso lapses.

The works council is also to be consulted before any termination with the option of altered conditions of employment. General employment protection applies to terminations with the option of altered conditions of employment, upon the condition that the change in the employment conditions – instead of the termination of employment – must be socially justified. Special employment protection is to be observed in all cases without restrictions.

Even after the end of the employment contract both the employer and the employee may have **continuing obligations**.

In many companies, there is a **company pension scheme**. Even after the end of the employment contract, contingent rights do not expire if a certain length of service has been reached.

During the employment contract, the employee is subject to an **anti-competition clause**. This prohibition ends at the same time as the employment contract, unless the parties have agreed to a post-contractual anti-competition. In order for it to be effective, a post-contractual anti-competition clause must be in the written form, and a document containing the provisions must be presented. For the duration of the prohibition, the employer must pay the employee relevant compensation. The annual compensation must at least half of the employee's last remuneration, for each year of prohibition. Otherwise, the prohibition of competition is not binding. The scope of the prohibition of competition is limited by the legitimate business interests of the employer. It must also not unreasonably hamper the progress of the employee, and must not exceed a period of two years from the date of termination of the employment contract.

3.2.9. Job reference

The employee is entitled, upon leaving the employment contract, to the employer issuing him/her with a **letter of reference**. During the ongoing employment contract, the employee may demand the issuance of an interim reference; there must be a valid reason for this, however (e.g. a change of supervisor). The employer should note that the final letter of reference may only deviate from the assessments given in the intermediate reference if the subsequent performance and the subsequent conduct of the worker justifies this.

There are two types of references.

- In a "basic" reference, the employer certifies the nature and duration of the employment and the employee's occupation.
- At the request of the employee, the employer must draw up a "qualified" reference. This contains, in addition to the aforementioned information, an assessment of the employee's performance and conduct.

A reference must contain the truth, but must also be cordially formulated. The career progress of the employee may not be made more difficult by the reference. The wording of the assessments is at the discretion of the employer. In practice, typical formulations are used:

Assessment of performance	**Assessment of conduct**
"The employee completed the tasks entrusted to him/her…" always to our greatest satisfaction → very good (1)	"His/her behavior with regard to superiors, colleagues, employees and customers was…" always exemplary → very good (1)
always to our full satisfaction → good (2)	exemplary/always faultless → good (2)
always to our satisfaction → satisfactory (3)	faultless → satisfactory (3)
to our satisfaction → below average (4)	without reproach → sufficient (4)

Although the employment contract may have been free of complaint, this does not necessarily lead to the assessment being "very good". A "satisfactory" assessment is in fact the norm.

In terms of formalities, it should be noted that the reference is to be printed on company headed paper and signed by the employer. It must be free of spelling errors. The following structure is common:

- The title is given as: "Reference" or "Employment reference".
- The employee's personal details are stated by way of identification.
- This is followed by the operational information. This includes the period of employment, a description of the relevant role and any further training.
- The assessment of performance and conduct follows.

- The reason for the employee's departure is stated.
- In the final paragraph, regrets as to the departure may be expressed, as well as thanks for the work completed and best wishes for the future.

3.3. Employer's liability

The term employer's liability refers to the legal consequences of breaches of the employers' duties owed to their employees. The issue is whether and the extent to which an employer can be made responsible for damages. The basic principle under German civil law is that anyone who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation for the damage arising from this. Generally, the same applies for damages resulting from a culpable breach of the employer's contractual duties. However, this basic principle is restricted with regard to personal injuries caused by accidents at work and is extended with regard to the employer's liability for property damages.

3.3.1. Exclusion of the employer's liability for personal injuries

If an employer, his legal representative or other person whom the employer uses to perform his obligations is responsible for personal injuries of an employee due to an accident at work a special statutory rule is applicable: According to section 104 of the Social Security Code VII the employer's liability is excluded for personal injuries on the provision that the work-related accident was not caused intentionally and was no commuting accident.

The justification for this exclusion of the employer's liability is that the injured employee will receive a compensation for his personal injuries through the statutory accident insurance (gesetzliche Unfallversicherung) to which solely employers make contributions (please see section 5.1.5 below).

If the employer acted with intent, he is obliged to compensate his employees for personal injuries caused by accidents at work. Furthermore, the employer would be liable to the statutory accident insurance provider if he caused an accident with gross negligence.

3.3.2. Employer's liability for property damages regardless of negligence or fault

Under certain conditions the employer is liable for the employees' property damages even if the employer didn't act with negligence or intent. The employer has to compensate the employee for unusual property damages at work and for property damages which occurred because the employee used his property for fulfilling his contractual duties on the employer's instruction (for example a damage of the employee's car while used for a business trip). Such a compensation claim would be excluded, however, if the employee caused the damage with intent or with gross negligence, if the employee has already been paid for the damage (for example in form of extra payment for dirty work with regard to expenses for the cleaning of his clothes), if the damage is usual for the type of work or belongs to the area of the employee's personal living (for example a damage of the employee's car he uses for his way to work).

3.4. Occupational safety and health

Employers in Germany have a general duty of care towards their employees which includes providing a work place that complies with all German statutory provisions on health and safety at work such as the Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (Act on Safety and Health at Work - Arbeitsschutzgesetz) and the Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists (Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit / Arbeitssicherheitsgesetz). The SARS-CoV-2 Occupational Health and Safety Ordinance (SARS-CoV-2-Arbeitsschutzverordnung) regulates additional measures to ensure health protection of employees during the pandemic. In particular, measures to reduce contact in the workplace and the provision of respirators and rapid tests by employers are important components of this regulation.

Furthermore, employers are obliged to make contributions to the statutory accident insurance with the competent workmen's compensation board (Berufsgenossenschaft). The amount of this contribution is fixed by the competent workmen's compensation board, taking into account the risks of work accidents in the particular branch and statistics for accidents (please see section 5.1.5 below).

According to the Act on Safety and Health at Work, employers are obligated to take the necessary measures of occupational safety and health, taking account of the circumstances that influence the safety and health of employees at work. Employers have to identify the risks of the different job positions in their company and are obliged to implement necessary protective measures without delay. The protective measures already taken have to be continuously examined and, where necessary, adapted to changing circumstances.

Employers shall take the necessary measures for first aid, fire-fighting and the evacuation of employees. This includes that employers shall nominate those employees who are to take on the task of providing first aid, fire-fighting and evacuation of the employees.

Moreover, employers shall enable employees to undergo regular preventive medical check-ups at their request depending on the risks to their safety and health at work. They also have to give all required information to their employees and inform them about hazards they may be confronted with. Employers shall take measures to ensure that only those employees have access to especially dangerous work areas who have previously been given appropriate training instructions.

Beyond that, employers who have an operational site in Germany must appoint occupational physicians and trained personnel to perform the tasks described in the Arbeitssicherheitsgesetz. The medical service hours which shall be provided by occupational physicians depend on the number of employees linked to the operational site. The tasks of the occupational physicians are for example to support the employer with risk assessments, to support the employer to create a healthy work environment with e.g. oral or written instructions for the employees or to provide general advice to the employer and employees.

On request, employers must provide the accident insurance institution with evidence of how the obligations

described in the Arbeitssicherheitsgesetz have been met.

If the employer fails to provide occupational safety and health, the legal consequences depend on what act was violated. In general, such violations are punishable by fines. According to the German Act on Safety and Health at Work (Arbeitsschutzgesetz), the administrative offence committed by the employer can be punished with a fine of up to EUR 25,000. In severe cases, the employer can even be punished with a prison sentence of up to one year or a fine.

3.5. Works council

German labor law puts a strong emphasis on the participation of the employees in managerial decisions. The employees of an establishment exercise their right of participation through an elected body of representatives, the works council (Betriebsrat). The whole system of co-determination on the establishment level, the rights and duties of the works council, the employer and their cooperation, are governed by the Works Constitution Act (Betriebsverfassungsgesetz). These participation rights have different degrees, starting from information and consultation rights, extending, in certain areas, to full co-determination rights, a kind of co-management of employer and employee representatives, unknown to most other legal systems.

Works councils are to be set up in all establishments with five or more employees; they do not have to be registered. Regular elections (by direct vote in secret ballot) take place every four years. The employer has to cooperate, but it is not his legal duty to start or organize the elections. This is entirely up to the employees who have to take the initiative, often relying on union support. The size of the works council depends on the number of employees in the establishment (no distinction being made between white and blue collars with the sole exception of executives, see below) and can vary from one member up to 40, 50 or even more members in big factories (the Works Constitution Act does not limit the size to a maximum number). Works council members are heavily protected by law: they have to be released of their work without any pay reduction to the extent necessary for them to fulfill their duties; depending on the size of the establishment, a certain number of them has to be released completely to act as full time works council members. They enjoy special protection against dismissal. Any kind of disadvantageous or preferential treatment, as well as obstruction in the performance of their duties, by the employer is forbidden and can give rise to criminal prosecution. Works council meetings are held during working hours. The costs for all works council's activities are to be borne by the employer, including works council trainings or lawyers' fees; he must provide the necessary rooms and other resources (IT, suitable space, office equipment etc.).

The works council is based on the establishment level. The establishment (Betrieb) is the organizational unit in which the working process is organized and performed (e.g. a plant), but not a legal entity (company). If a company has more than one establishment, a central works council must be formed which deals with matters concerning the company as a whole or more than one establishment. The members of the central works council are appointed by the single works councils forming it. It is important to note, however, that it has no authority about the "lower" works council: each one has its own responsibilities which do not

overlap. On group level, a group works council may (not must) be set up. European Union law has introduced the European works council for cross-border companies, which however lacks real co-determination rights and is confined to information and consultation with the employer. Last but not least, German law also provides for a body representing executives, the executive staff committee (Sprecherausschuss), albeit vested with very limited powers not comparable to those of the works council.

The Works Constitution Act describes the tasks and rights of the works council vis-à-vis the employer. The core is constituted by the right of co-determination in social matters: in this area, the employer cannot take measures without prior agreement with the works council, including the following issues (the list is not exhaustive): organization of the establishment and employees' conduct on the premises (e.g. ban on alcohol or smoking; dress codes; time clocks); working hour schedules (e.g. shifts; overtime); introduction and use of technical equipment designed or apt to monitor employees (e.g. video monitoring; IT-systems); administration of social facilities (e.g. canteens; pensions funds); remuneration systems, where however the works council's rights are confined to issues of the pay structure, not extending to the amount of wages which remains the sole managerial decision of the employer (if not regulated by collective labor agreements, see below). If the employer plans changes in plant operations, e.g. management and production organization, the field of activities, downsizing or even relocation of the whole plant, which might bring about considerable disadvantages for the employees (including transfers, longer journeys to work, wage cuts, dismissals), he must negotiate a social compensation plan which aims to alleviate these economic disadvantages (e.g. severance payments, compensation for higher travel expenses etc.).

The works council exercises its right of full co-determination through works agreements (Betriebsvereinbarungen) with the employer. These contain binding regulations for all employees of the establishment, applying directly and with mandatory force to the individual employment relationships, giving rise to enforceable rights and duties in the same way as a collective labor agreement or even statute law does. After a works agreement on the aforesaid matters expires (e.g. for termination), it remains in force and has to be applied until replaced by a new agreement. Therefore, works agreements are of the utmost importance in German labor law. If employer and works council cannot reach an agreement on issues subject to full co-determination, the Works Constitution Act provides for a conciliation committee. This consists of an equal number of representatives of each side, chaired by an impartial person agreed on by both sides (or appointed by the Labor Court). The ruling of the conciliation committee on the disputed subject substitutes the works agreement and has the same legal effects.

Another important field of works council's participation are individual HR measures. Every hiring, transfer (assignment of a different area of work for more than one month) or grading into a collective compensation system of an employee is subject to prior approval of the works council. In contrast to full co-determination, the works council can only say yes or no to the proposed measure, but it cannot bring or enforce an own alternative proposal. The Works Constitution Act lists all the reasons which entitle the works council to withhold approval, e.g. if the particular measure planned by the employer is against the law, internal procedures have not been followed, the employee suffers a disadvantage, no job announcement for the vacant

post has been published etc. If the works council does not explicitly refuse its consent or refuses it without giving reasons within a week after having been informed by the employer, it will be deemed to have given its approval. In case of explicit refusal, the employer is not allowed to carry on with the proposed measure unless authorized by a Labor Court decision. The works council has to be heard before every dismissal, if not, the dismissal is invalid. The employer must inform the works council extensively about the grounds for the dismissal, the factual circumstances and the person(s) to be dismissed. The works council must be given the opportunity to issue a statement, but the validity of the dismissal does not – other than the HR measures mentioned above – require approval.

Besides, the works council has far-reaching rights of information, as a basic rule on everything that falls within its area of responsibility (e.g. staff planning; inspection of wage and salary lists). It is obliged by law to hold works meeting of the whole staff at least once every quarter. All employees are entitled to address the works council individually during working hours.

The Works Constitution Act obliges both sides to cooperate in full mutual trust, to the benefit of the employees and the establishment. Therefore, the works council is forbidden to take part in industrial action which is completely given over to the unions. All rights and duties arising from the Works Constitution Act can be enforced – by either side – in a Labor Court.

3.6. Trade Union and collective bargaining

Trade unions play a very important role in German economy. The Constitution (Basic Law – Grundgesetz) explicitly guarantees to everyone the right to form associations to safeguard and improve working and economic conditions. This applies to both unions and employers' associations, which freely conclude collective labor agreements on general working conditions (Tarifverträge), the state having to abstain from intervention in the collective bargaining process (principle of tariff autonomy).

Trade unions, under German law, are organized along the specific branch they represent; groups representing only workers of a specific company are not given union status. Membership to the union is voluntary. Nobody can be forced to join or to leave a union, the employer is forbidden to enquire about union membership (particularly in the process of hiring). Members pay a contribution based on their individual income; the rights of membership include free representation in a lawsuit before a Labor Court. The biggest union is IG Metall (metal workers) with more than two million members, followed by verdi which represents the service sector; other unions cover the mining, chemicals and energy sector (IG BCE), construction and agriculture (IG BAU), education (GEW), railway workers (EVG), food, beverage and catering (NGG) and the police (GdP). These unions adhere to the umbrella organization German Trade Union Association (DGB) with currently more than six million members. Besides, there are also unions which represent only specific professions, e.g. health (Marburger Bund), pilots (Cockpit), and engine drivers (GDL). Due to their immense bargaining power, these unions have recently grown in importance, staging industrial action on a great scale.

The acknowledgement as a union is important since it confers specific rights, in the first place to conclude legally binding collective labor agreements. There is no official procedure to gain this status as in other jurisdictions; but there are legal requirements, based entirely on case law, a union has to fulfill: it must have a stable and democratic organization, free of influence from the opponent, and wield a certain bargaining power; the union must be in a position to negotiate with the employer side as equal, in order to guarantee that the agreements are in the best interests of the employees represented. Union status can be challenged in court (e.g. out of conflicts between concurring unions); the German Federal Court of Labor recently ruled that an association representing temporary workers lacked union status, with the consequence that the collective labor agreements to which it was a party were void (with no small consequences for employers and employees who had relied on their validity).

Collective labor agreements are concluded between a union and an employers' association or a single employer (company). It has binding effect not only on the parties to it, but also to all employees who are members of the contracting union. To them, it applies directly and with compulsory effect, like a works agreement (see above) or statute law. It cannot be amended, by individual agreement, if not to the advantage of the employee. This binding effect is limited to union members. The employer is free to agree with all non-members on different terms of employment. However, it is current practice in a multitude of companies to insert a reference clause in the employment contract which refers to the relevant collective labor agreement. Finally, the Federal Ministry of Labor can declare collective labor agreements to be of general application if it deems this to be in the public interest. This is of particular importance in the case of foreign workers posted in Germany: the Posted Workers Act (Arbeitnehmer-Entsendegesetz) gives additional powers to the Ministry to extend, in certain industry branches, the applicability of collective labor agreements to all employers and employees, including the foreign ones. Therefore, collective labor agreements assume a central role in regulating working conditions for union members and non-members alike.

Collective labor agreements remain binding and in force after termination (like works agreements) until a new agreement is found (which can be on the collective, establishment or individual contract level). Likewise, if an employer gives up membership in the employers' association, he will nevertheless be bound to all collective labor agreements in force at the time of his withdrawal until their termination. In case of conflict between a collective labor agreement and a works agreement, the former prevails since working conditions normally regulated by collective labor agreements – the most important being the amount of wages – cannot be covered by works agreements.

The exercise of the constitutional right for industrial action is limited to unions. A strike can only be called in order to reach a collective labor agreement with the employer side (which excludes strikes for purely political reasons). If there is a collective labor agreement still in force (not terminated) which already provides for the union's demands, the strike is illegal; this is called the obligation of industrial peace and is one of the great advantages collective labor agreements give to the employer. Its violation can have serious consequences for the union, e.g. damages.

Unions have the constitutional right to canvass and recruit new members in the establishment. They have a supporting function in the works constitution, may be invited to works council and works meetings and gain certain – but not unlimited – rights of access to the premises. Various laws confer specific rights on the unions (and their counterpart, the employers' associations): e.g. they have the right to nominate honorary judges for the Labor Courts, and membership and hearing rights in ministerial and EU committees.

The German law of co-determination on the company level (to be distinguished from the establishment level, see above) confers an important role to the unions. German capital companies (plc., Ltd = AG, GmbH) are obliged to set up a supervisory board on the following conditions: if the number of employees exceeds 500, one third, if its exceeds 2000, half of the members of the supervisory board must be employee representatives, and depending of the size of the board a certain number of seats is reserved to the unions which gives them direct control and participation in managerial decisions on the company level.

3.7. Temporary work, temporary worker assignment

Temporary work is widely used to cover the need for additional workforce on short notice and for a limited period of time. Companies can use temporary workers in their operations as if they were regular employees. In particular, they can work together in teams with company's own employees and they can be subject to direct instructions. This is a significant difference to other contracts in which external staff works on the client's site. However, temporary work is not possible on a permanent basis.

This type of employment is, however, strictly regulated and supervised by the German authorities, in particular after a major reform of the German Law on Temporary Work which entered into force in April 2017 with stricter legal requirements. Companies are strongly advised to observe these requirements in order to avoid negative consequences which will be outlined below. The same rules and regulations apply irrespective of whether temporary workers are hired from inside or outside Germany. Significant fines can be imposed when hiring foreign temporary workers who do not hold the required residence/work permit. Even imprisonment can be a sanction in such case.

Temporary workers must not be used as a replacement for employees on strike. In the construction industry, temporary work is generally not permitted.

3.7.1. Requirements

Companies who provide temporary workers (temporary work agencies) require a statutory license, issued by the Federal Employment Agency. Such license is initially granted for a limited period of one year and can be prolonged upon request of the temporary-work agency.

When employing temporary workers, companies should always request a copy of the valid license of the temporary-work agency and terminate the assignments duly before the license expires, unless the temporary-work agency provides proof of prolongation.

When hiring temporary workers, the prior consent of the client's works council is required (which may be recommendable to be obtained in writing).

Providing temporary workers that are not directly employed by the contracting temporary-work agency is not permitted. Hence, companies making use of temporary workers should make sure that only direct hires are provided as temporary workers by the temporary-work agency. This also means that temporary workers that have been hired from a temporary-work agency must not provide their workforce to third parties, e.g. to other group companies.

The contract between the temporary-work agency and the hiring company has to be explicitly named "contract for temporary work". The Law on Temporary Work stipulates a written form requirement which has to be met before the assignment of a temporary worker can start. This means that the contract has to be signed by hand i.e. both parties must sign the original document. A scan or stamp is not sufficient in this context. Furthermore, the respective workers have to be named individually in the contract and they have to be informed about their assignment as temporary workers.

The maximum duration of the assignment for each individual temporary worker is limited by law to 18 consecutive months. A replacement of the temporary-work agency will not restart this period since the period is linked to the respective worker. The maximum period can only be exceeded if it is agreed on in a collective labor agreement (Tarifvertrag). However, the maximum period restarts if an assignment is suspended for at least three months.

The German Law stipulates a privilege for temporary work within a group of company. Workers can be lent to other companies within the same group without the requirement of a license. In addition, most regulations of the German Law on Temporary Work are not applicable. However, this privilege applies if the employees that shall be lent to other group companies were not hired for the purpose of using them as temporary workers and provided that they are not mainly employed as such.

3.7.2. The consequences of illicit supply and use of temporary workers

If the statutory requirements for temporary work are not met, an employment relationship between the temporary workers and the hirer will be established by law with retroactive effect. As a consequence, the hirer has to pay social security contributions and taxes for the temporary workers.

In addition, fines of up to EUR 500,000 can be imposed against the temporary-work agency and/or its customers in case of a violation of the Law on Temporary Work. Temporary-work agencies also face the risk of a refusal/revocation of their license to provide temporary workers.

Due to the media presence of this topic, companies should be aware that there is also a reputational risk in case of an illegal use of temporary workers.

3.7.3. Minimum conditions of employment for temporary workers

Companies have to ensure that the principles of equal treatment are observed, i.e. temporary workers have to be granted the same working conditions as comparable regular employees of the hiring company. This includes, in particular, an entitlement to equal pay. Deviations from this principle are only allowed by means of a collective labor agreement of the temporary work sector and only for a limited period of time – depending on the regulations of the respective collective labor agreement.

3.8. Vocational training

In a traineeship, the education and training is the primary aim. Accordingly, traineeship and employment relationships are generally differentiated by the fact that the primary goal of a traineeship is for the trainee to gain business experience and skills, while the employment relationship's primary goal is the exchange of service for remuneration.

However, in most cases there is a legal requirement to remunerate trainees. The level of the remuneration for foreign trainees also depends on the kind of residence permit they are planning to apply for. For example, for trainees applying for an ICT Card the remuneration must reach the level of remuneration of comparable trainees at the relevant place of the vocational training in Germany.

Trainees are – just like employees – entitled to paid vacation, holiday pay and continued remuneration when they are sick. A trainee probationary period may be agreed upon that is no more than four months. Within this time period either the company or the trainee can end the trainee relationship without notice.

Trainees in Germany are entitled to a reference letter when the traineeship ends. The reference letter has to contain type, duration and aim of the training as well as the professional skills, knowledge and experience acquired by the trainee. At the request of the trainee, information about the behavior and accomplishments are also to be included.

3.9. Disputes

For disputes under labor law, there is a special jurisdiction: the labor jurisdiction. This is governed by the Labor Court Act (Arbeitsgerichtsgesetz). Labor jurisdiction is consisting of three parts: first instance Local Labor Courts (Arbeitsgerichte), second instance Regional Labor Courts (Landesarbeitsgerichte) and third instance the Federal Labor Court (Bundesarbeitsgericht). Any (Local) Labor Court is compiled of one professional judge and two honorary judges. The honorary judges are non-paid; one is appointed by the rank of employers, the other by the rank of employees – apart from the specific case. The professional judge is the chairperson, but every judge has the equivalent legal power. The local jurisdiction shall be determined by reference of the place of the registered office of the employer or the workplace of the employee. To file a lawsuit any party has to lodge a written complaint to a Local Labor Court. At the first instance, each party is free to represent himself in court or be represented by a lawyer, an employers' organization or trade union.

There are two types of proceedings in labor jurisdiction depending whether the claim is based on individual or collective labor law. The main area are disputes based on individual labor law, e.g. complaints against dismissals. The first hearing is the so-called conciliation hearing. Only the parties and the professional judge participate, and they discuss the claim on fact and law. The hearing should aim at finding an amicable solution to the issue at stake. If this can't be found, another hearing with the voluntary judges will be scheduled. Each party explains its legal view and provide evidence to the facts in question. If the parties don't solve the dispute by a settlement, the court will deliver a judgment (Urteil). In Labor Court proceedings of the first instance the winning party have no right to claim costs, e.g. for mandating a lawyer; each party have to bear their own costs.

Against judgments of Local Labor Courts appeals can be lodged with the relevant Regional Labor Court. Against Regional Labor Court judgements only appeals on points of law can be lodged; these are heard by the Federal Labor Court.

Collective disputes, e.g. in terms of works constitution law, are part of the other type of proceeding. These proceedings are quite similar to individual labor law proceedings. The biggest difference is the examination of the facts by the court itself and the judgment is called "Beschluss".

On a proposal from the court, each party can initiate an out-of-court mediation. This opportunity to find an amicable settlement may be useful to cut costs and find a face-saving settlement outside the publicity of a court hearing.

4. Intellectual property, employee inventions, technical improvements

The Employee Inventions Act (Arbeitnehmererfindungen-Gesetz) regulates in detail the legal relations between employer and employee for inventions (patents and designs) and technical improvements. This Act supplements the Patent Act (Patentgesetz). The Design Act (Designgesetz) contains provisions on designs made by an employee. For works that are capable of copyright protection, the Copyright Act (Urhebergesetz) has special rules that play an important role in employment law practice because about three quarters of inventive and artistic works in Germany are made by employees.

Whenever an employee has created a work capable of copyright protection while fulfilling his contractual duties, the work is fundamentally the result of his working performance. Because the employer is entitled to this working performance, he is the only one that automatically buys this work result. However, this principle of employment law can only regulate the classification of property rights in the work and, more precisely, actual pieces of work. The employer only acquires the property and ownership of the work result.

4.1. Copyrights

In contrast, the copyright in the work is governed by copyright law. Under German copyright law, the rights to an invention in the broadest sense are originally vested in the originator, i.e. the natural person who conceived the invention. Thus, copyright is attributable to the employee as the originator of the work. The employer can require that the employee grants user rights that he needs for business purposes. Even if the parties had, by way of exception, not agreed to terms about this, the employment contract can usually be interpreted to give the employer a claim for the corresponding grant of user rights. Usually, however, there is an express obligation to this effect on the part of the employee in the employment contract or in a collective labor agreement. Furthermore, it is usually agreed that the employee gives the employer a “pre-grant” of user rights for those works that he has made alone.

Copyrights provide protection for personal intellectual creations bearing the imprint of the originator’s personality. There are no formal requirements such as registration. The right accrues upon creation and is protected until 70 years after the death of its originator. The copyright per se is generally not transferable but rights of use and exploitation may be granted leading to a commercially similar result. Licensing agreements should be carefully drafted as the German Copyright Act provides for a rule of interpretation protecting the originator’s interest: Unless otherwise agreed, rights are only granted to the extent necessary for the purpose of the underlying contract. Some limitations trigger the payment of compensations that are collected by collecting societies and have to be paid by manufacturers, importers and traders of devices and data carriers.

4.2. Ownership of employee inventions

An employee invention does not automatically become the property of the employer. The employee must report his invention to the employer and the employer must claim it after it was reported by the employee. If this right is exercised, the employer is obliged to register the invention as a patent. **Work related inventions** reported on by an employee after 1 October 2009 **are considered to be claimed by the employer** if no statement to the contrary is made by the employer within four months.

If the employer declares in text form within four months after the employee's report, that the invention is free, then the employee can freely use it.

If the employee violates his reporting obligation, the employer can claim damages if damage has been caused. In severe cases, e.g. culpable breach of duty, the employee must expect to be dismissed.

If an employee notifies the employer of an invention which, in his view was developed outside the course of employment, the employer must formally declare within three months that it was in fact created in course of the employment, thereby preserving its rights. If the employer fails to act within this period, the employee will be free to use the invention himself.

4.3. Inventor's Compensation

If the invention has been claimed by the employer, he must pay to the employee a reasonable compensation, i.e. a percentage of the commercial value of the invention, which includes at least the internal use by the employer. The same applies for technical improvements suggested by an employee. The compensation is due for the entire period of commercial exploitation of the invention or technical improvement, generally as long as the patent stays in force and also after the employment relationship has been terminated. There is no specific term limitation (e.g. six years) for the compensation. The amount and/or the modalities of compensation become binding

- by explicit agreement between employer and employee;
- by implicit agreement if payments are made by the employer and the employee accepts the compensation without making objections;
- if the employer unilaterally sets the compensation and the employee does not object within two months.

The compensation can be paid as a one-time lump-sum, based on the total reasonable commercial value of the invention, or recurring, based on the ongoing exploitation of the invention.

The commercial value of the invention includes the revenues from the sale of the invention or related patents and may include the use by affiliates within a corporate group.

If the patent is sold within a corporate group or to third parties, the (net) sales price usually reflects the (additional) value of the invention. If this price substantially exceeds the value used as the basis for the prior

compensation, the employee may claim additional compensation.

Even if employer and employee agreed upon the amount and modalities of compensation, the employee can claim additional compensation if the commercial value of the invention subsequently appears substantially higher or if the compensation otherwise appears inequitable.

This may be the case e. g. if the compensation was paid only for a limited period or only for the use by the employer, but not by affiliates, or the invention appears substantially more valuable because the invention or related patents were sold at a very high price.

During litigation regarding such additional compensation, the employee may claim the disclosure of detailed business information necessary for calculating the compensation, e. g. information on invention-related production and distribution, possibly worldwide. If the claim for additional compensation is based on the use of the patent by the employer and/or his affiliates, the commercial value of the invention is calculated according to the license analogy, which is based on the number of produced and/or delivered goods covered by the respective invention, and the price of these goods. If the parties do not agree upon the (additional) compensation and the employee initiates judicial proceedings, the employer has to disclose the business information necessary for the calculation of the value.

5. Social insurance

The German system of social insurance provides comprehensive support and protection if people are sick, disabled, unemployed or retired. Its main principle is the principle of solidarity – apart from a few exceptions (please see section 5.1 below) all employees who work in Germany generally participate and have to contribute to the social insurance. The individual contributions are based on the employee's income level and are automatically deducted from the employee's gross salary. Employers have to register their employees with the insurance fund and handle the payment of social security contributions as soon as the employment begins.

The social security contributions usually amount to about 40 percent of the employee's gross income but employers typically pay about half of it (please see section 5.1.7 below). Employer and employee may not agree to opt out of the social insurance system.

Foreign employees who are working in Germany are generally subject to pay contributions to the social insurance system, too. However, in order to facilitate the movement of employees, Germany has concluded bilateral social security agreements with various countries - including China - to prevent double insurance. Depending on the individual social security agreement, the employees may remain within the national social insurance of their home country, if they are posted to Germany for a certain time only (please see section 5.2 below).

5.1. German social security system

According to the regulations in book IV of the Social Security Code (Social Security Code IV – Sozialgesetzbuch IV), the employer has to take the necessary steps to register each individual employee in the social security system by reporting to the competent health insurance provider i.a. the beginning and end of employment. The health insurance provider then informs the other insurance bodies.

That said, the German social security system is based on five pillars:

- Health insurance (Krankenversicherung)
- Long-term care insurance (Pflegeversicherung)
- Pension insurance (Rentenversicherung)
- Unemployment insurance (Arbeitslosenversicherung)
- Accident insurance (Unfallversicherung)

Even though the participation in the social security system is generally mandatory, there are some exceptions from the statutory social insurance e.g. for employees with an income above a certain threshold (please see overview under section 5.1.7 below) as well as for self-employed persons. Further exceptions apply to individuals who are marginally employed and earn no more than EUR 450 per month and short-term employees who work less than two months or 50 days during the calendar year.

5.1.1. Health insurance

The statutory health insurance is the oldest branch of the German social security system. Its legal basis is to be found in book V of the Social Security Code (Social Security Code V – Sozialgesetzbuch V). All members of the statutory health insurance scheme are free to choose their health insurance provider. The benefits and services of the health insurance are quite extensive as they generally cover necessary medical treatment for rehabilitation following sickness, as well as services around the prevention of illness and health risks (e.g. check-ups and vaccinations). Furthermore, the statutory health insurance companies pay so-called sickness benefits (Krankengeld) if an employee has been sick for more than six weeks. Sickness benefits are paid upon a corresponding application by the employee for a maximum period of 78 weeks during a period of three years and usually amount to about 70 percent of the employees' basic salary. During the first six weeks of sickness the employer usually continues to pay the full salary (please see chapter 3.2.7 above).

Membership in one of the more than 100 statutory health insurances is mandatory for employees whose annual gross salary is below the limit for mandatory insurance (Versicherungspflichtgrenze) of EUR 64,350 or EUR 5,362.50 per month in 2021. If the employee's income is above the limit for mandatory insurance it is possible to change to a private health insurance provider. The annual contribution assessment ceiling (Beitragsbemessungsgrenze) in Western and Eastern Germany is currently at EUR 58,050 or EUR 4,837.50 per month – meaning that contributions have to be paid on income up to the assessment ceiling (please see section 5.1.7 below).

The basic flat contribution (allgemeiner Beitrag) to the health insurance amounts to 14.6 percent of the employee’s gross income and is equally shared between the employer and the employee. In addition to said basic flat contribution, each health insurance provider may – depending on its financial situation and range of services – charge the parties with a supplemental payment. In 2021 the additional payments amount in average to a total of 1.3 percent. Contributions to the statutory health insurance are based on the principle of solidarity – meaning that contributions are set independently of the individuals insurance risk.

The German National Association of Statutory Health Insurance Funds (GKV-Spitzenverband) provides a list of all public health insurance providers and their additional contribution rates online.

5.1.2. Long-term care insurance

All members of a statutory health insurance are automatically covered against the risk of need for long-term care. Long-term care insurance covers individuals who suffer physical, mental and psychological restrictions to their independence or abilities and consequently need the help of others. The increased need for nursing or household assistance must be enduring – meaning there has to be an expected need for long-term care of at least six months. Long-term care insurance is governed by book XI of the Social Security Code (Social Security Code XI – Sozialgesetzbuch XI) and the benefits available to beneficiaries are scaled in relation to the different levels of care.

Long-term care insurance is basically organized in a similar way as the statutory health insurance (please

see section 5.1.1 above). Contributions are equally shared between the employer and the employee. The overall contribution rate amounts to 3.05 percent of the employee's gross salary. The contribution rate for employees without children is 3.3 percent in 2021. The annual contribution assessment ceiling in Western and Eastern Germany is currently at EUR 58,050 or EUR 4,837.50 per month (please see section 5.1.7 below). Please note that specific regulations apply in the federal state of Saxony.

5.1.3. Pension insurance

The statutory pension insurance is regulated in book VI of the Social Security Code (Social Security Code VI – Sozialgesetzbuch VI) and provides old-age pensions, reduced earning capacity pensions as well as surviving dependents' pensions (pensions on account of the insured person's death). With few exceptions, all employees are compulsory insured in the pension insurance. Self-employed individuals are usually self-insured but are allowed to participate in the in the statutory pension scheme. Civil servants have a separate pension system.

In order to be entitled to a pension, employees must usually have been insured for a minimum period of five years (Wartezeit) and meet certain personal and insurance requirements. The standard retirement age (Regelaltersgrenze) is to be gradually increased from 65 years in one-month increments to 67 years until 2029, starting with employees born in 1947. Pension payments mainly depend on the amount of social security contributions paid by the individual during his/her working life. Employees should file their pension application about three months before their retirement date.

The contributions to the pension insurance are equally split between the employer and the employee. The overall contribution rate amounts to 18.6 percent of the employee's gross salary in 2021 – meaning the individual share of the employer and the employee is at 9.3 percent each. The current annual contribution assessment ceiling in the pension insurance is in Western Germany at EUR 85,200 or EUR 7,100 per month – in Eastern Germany at EUR 80,400 per year or EUR 6,700 per month (please see section 5.1.7 below).

5.1.4. Unemployment insurance

In principle, the unemployment insurance is mandatory for all employed persons and apprentices. It is regulated in book III of the Social Security Code (Social Security Code III – Sozialgesetzbuch III) and provides – if certain requirements are met – a wide range of benefits such as: short-term working benefits, payments for vocational training, jobs service, prevention of unemployment and of course unemployment benefits.

The amount of unemployment benefits varies according to the individual's prior salary, tax category and whether the beneficiary has children. Depending on the employee's age and duration of prior employment, unemployment benefits are limited in time (up to a maximum of 24 months) and may be even suspended if the unemployed person does not cooperate with the Employment Agency (Agentur für Arbeit) who is the carrier of the insurance. Once the period for unemployment benefits has expired, the individual can apply for subsistence allowance (Arbeitslosengeld II) which is lower than the unemployment benefits and regulated in book II of the Social Security Code (Social Security Code II – Sozialgesetzbuch II).

Contributions to the unemployment insurance are equally shared between the employer and the employee. The total contribution rate amounts to 2.4 percent of the employee's gross salary. The current annual contribution assessment ceiling in the unemployment insurance is in Western Germany at EUR 85,200 or EUR 7,100 per month – in Eastern Germany at EUR 80,400 per year or EUR 6,700 per month (please see section 5.1.7 below).

5.1.5. Accident insurance

Statutory accident insurance is the fifth pillar of the German social insurance system and regulated in book VII of the Social Security Code (Social Security Code VII – Sozialgesetzbuch VII). The insurance provides resources to prevent basically any accidents at work and occupational diseases, to restore the insured employee's health and physical powers following an occupational accident or work-related illness, to recompense the insured or their surviving dependents through monetary or pension benefits. Furthermore, the accident insurance cover also applies to the employee's journey to and from work.

In contrast to the other four obligatory insurances the accident insurance is exclusively funded by the employer. The employer's contribution amount mainly depends on two factors – the potential risk of an accident happening in the employer's business sector and the total sum of wages paid by the employer per year. On average, the employer's contribution rate to the accident insurance amounted to about 1.16 percent of the gross wage in 2017. In return, employers are highly privileged when it comes to the liability to their employees for industrial accidents and occupational diseases - as the employer's liability is restricted to intentional acts only – meaning employees will generally have to apply for benefits directly from the accident insurance in the event of an accident at work or occupational disease.

5.1.6. Family insurance

Under certain conditions, the statutory health insurance also covers the employees' spouses, civil partners and children at no extra charge. Said family members are usually exempted from paying contributions as long as their collective regular income does not exceed EUR 470.00 per month in 2021.

5.1.7. Social security contribution amount

The contribution amount to the German social security system is calculated on the employee's individual income level. However, contributions have to be paid only up to the contribution assessment ceiling of the corresponding insurance. In other words, any income exceeding the cap of the contribution assessment ceiling is not subject to contributions. The contribution assessment ceiling is adjusted each year.

The following table shows the contribution rate in percent of the employee's gross wage to be paid by the employer and the employee in the different branches of the German social security system in 2021:

Social security contributions

	Total contributions 2021 (in % of gross wage)	Employer Share	Employee Share
Health insurance	14.6 % [1]	7.3 %	7.3 %
Long-term care insurance	3.05 %[2]	1.525 %	1.525 %
Pension insurance	18.6 %	9.3 %	9.3 %
Unemployment insurance	2.4 %	1.2 %	1.2%
Accident insurance	1.16 %[3]	1.16 %	-

[1] plus additional contributions; reduced contribution rate: 14.0 %

[2] childless employees aged above 23 years pay an extra 0.25 % long-term care insurance. Specific regulations apply in the federal state of Saxony.

[3] average accident insurance contribution in 2017 according to the Germany Social Accident Insurance (*DGUV*)

The following table shows the applicable contribution assessment ceilings for the "Old" federal states in Western and the "New" federal states in Eastern Germany for 2021:

Social security contribution assessment ceilings

	Annual Contribution Ceiling West	Annual Contribution Ceiling East	Monthly Contribution Ceiling West	Monthly Contribution Ceiling East
Health insurance	EUR 58,050	EUR 58,050	EUR 4,837.50	EUR 4,837.50
Long-term care insurance	EUR 58,050	EUR 58,050	EUR 4,837.50	EUR 4,837.50
Pension insurance	EUR 85,200	EUR 80,400	EUR 7,100	EUR 6,700
Unemployment insurance	EUR 85,200	EUR 80,400	EUR 7,100	EUR 6,700

5.2. Exemptions from German social insurance for foreign employees

As a rule, the German regulations governing the statutory pension insurance, unemployment insurance, health insurance, long-term care insurance and accident insurance apply if an employee is working in Germany (**"territory principle"**). This is irrespective of the employee's nationality.

However, there are some exemptions from the German social insurance regulations that would permit only the Chinese statutory social insurance regulations, if applicable, to cover a secondment in Germany. These exemptions are regulated in the **Agreement between the Federal Republic of Germany and the People's Republic of China on Social Insurance regarding Pension Insurance and Unemployment Insurance** (please see chapter 5.2.1 below) and in Section 5 of the German Social Security Code IV for posted employees with regard to the question whether the German regulations on health insurance, long-term care insurance and accident insurance are applicable or not (please see chapter 5.2.2 below).

If such an exemption is given and only the Chinese legislation is applicable, the Department of International Cooperation of the Chinese Ministry of Labor and Social Security, Beijing, shall, upon request, issue a certification in respect of the relevant employment stating that the employee is subject to Chinese legislation. Such a certification must include information on the period for which it is valid.

In practice it is also recommended that the company in Germany should ask the German collecting agency and the competent workmen's compensation board in Germany for a written confirmation whether the statutory regulations in Germany on social insurance will be applicable for the relevant secondment or not.

5.2.1. Agreement between the Federal Republic of Germany and the People's Republic of China on Social Insurance regarding Pension Insurance and Unemployment Insurance

The Federal Republic of Germany and the People's Republic of China have concluded a bilateral Agreement on Social Insurance regarding pension insurance and unemployment insurance on 12 July 2001 that came into effect in Germany on 4 April 2002. This Agreement is applicable irrespective of the employee's nationality and **shall prevent from "double" social insurance payments** in Germany and in China with regard to **pension insurance** and **unemployment insurance**. For those social insurance branches not covered by the Agreement the social insurance obligation must be determined according to German and Chinese law.

a) Article 4 of the Agreement on Social Insurance: Secondment to Germany

When an employee who is employed in China **is sent by the employer to Germany** in the context of that employment to perform services in Germany for the employer in China, only the Chinese legislation on compulsory coverage regarding pension insurance and unemployment insurance shall continue to apply **during the first 48 calendar months** as though the employee were still in China.

The prerequisites for a secondment in the meaning of Article 4 of the Agreement on Social Insurance are as follows:

- A contract of employment continues to exist between the employee and the company in China. The

employer in China must still have the right to give the employee directions and instructions. This means that the employer in China must retain the power to determine the "nature" of the work performed by the posted employee, not in terms of defining the details of the type of work to be performed and the way it is to be performed, but in the more general terms of determining the end product of that work or the basic service to be provided. Moreover, the power to dismiss the employee or to impose disciplinary action on the employee must remain with the employer situated in China. It must be pointed out that a dormant employment contract in China would not be sufficient for a secondment in the meaning of Article 4; and

- the work during the secondment in Germany is made for and in the economic interest of the company in China; and
- the company in China must pay and bear the economic burden of the employee's remuneration; and
- the secondment occurs for a limited time frame which must be set in advance. The exemption is given for the **first four years of the secondment**, even if the secondment shall take place for more than four years. It must be agreed that, following the secondment, the employee will return to China again.

As a consequence, if all these conditions are met, the statutory provisions in Germany regarding pension insurance and unemployment insurance will not be applicable. If the secondment has ended, the same employee may be seconded to the same undertaking and the same EU member state only after the expiry of at least two months after the end of the previous secondment.

b) Article 8 of the Agreement on Social Insurance: Further exemptions

On a discretionary decision of the German Liaison Agency Health Insurance – International ("DVKA") and the Department of International Cooperation of the Chinese Ministry of Labor and Social Security further exemptions are possible according to Article 8 of the Agreement on Social Insurance. An exemption according to Article 8 of the Agreement on Social Insurance requires a joint application of the employee and the employer. Such an exemption is regularly granted in practice in the following cases:

- An employee of a company based in China is temporarily employed by an affiliate of this company in Germany and receives remuneration at the expense of the affiliate in Germany for this period; and/or
- The secondment is limited in time, but for a period which is longer than four years; and/or
- The assignment is limited in time, but based on a fixed-term contract of employment with a German entity whereas the contract of employment in China is dormant.

The exemption pursuant to Article 8 of the Agreement is generally issued for a maximum duration of **five years** on the first application. An **extension for further three years** and, on another application, **for a further fixed-term period** might be granted if the employee proves a justified interest that the Chinese statutory social insurance regulations remain applicable. A justified interest of the employee in remaining in the Chinese social pension and unemployment insurance system could be given for example when the employee

has solely been insured in the Chinese social insurance system until then and a unified insurance process is desired or when the age of entry for the standard retirement pension or other conditions for a pension claim deviate in Germany and in China and the employee intends to return and work in China following the secondment.

5.2.2. Exemptions according to Section 5 Social Security Code IV

The Agreement between Germany and China on Social Insurance does not contain any provisions regarding the statutory accident insurance, the statutory health insurance and the statutory home and institutional care insurance. With regard to these social insurance branches the obligation for insurance deductions and insurance claims is determined solely according to national law.

In case of a secondment in the meaning of Section 5 (1) of the German Social Security Code IV the statutory provisions in Germany regarding accident insurance, health insurance and home and institutional care insurance are not applicable. The prerequisites for a secondment in the meaning of Section 5 Social Security Code IV are nearly the same as for a secondment in the meaning of Article 4 of the Agreement between Germany and China on Social Insurance, namely:

- A contract of employment continues to exist between the employee and the company in China. The employer in China must still have the right to give the employee directions and instructions. This means that the employer in China must retain the power to determine the “nature” of the work performed by the posted employee, not in terms of defining the details of the type of work to be performed and the way it is to be performed, but in the more general terms of determining the end product of that work or the basic service to be provided. Moreover, the power to dismiss the employee or to impose disciplinary action on the employee must remain with the employer based in China. It must be pointed out that a dormant employment contract in China would also not be sufficient for a secondment in the meaning of Section 5 Social Security Code IV; and
- the work during the secondment in Germany is made for and in the economic interest of the company in China; and
- the company in China must pay and bear the economic burden of the employee’s remuneration; and
- the secondment occurs for a limited time frame which must be set in advance and it must also be agreed that the employee will return to China after the secondment. However, in contrast to Article 4 of the Agreement on Social Insurance, there is no maximum time limit envisioned in Section 5 Social Security Code IV. It is sufficient to specify a fixed term for the secondment. An extension for another fixed term would be possible as long as the further contract also states that the employee will return to China following the secondment.

A secondment within the meaning of Section 5 (1) Social Security Code IV also exists if the employee, with the consent of the employer, performs the employment in Germany in the form of telework "from home" (home office), even if the initiative for the secondment came from the employee.

5.2.3. Other nationals

The aforementioned rules and exemptions regarding the statutory provisions on social insurance in Germany also apply in the same way to non-Chinese nationals who are employed by a company based in China and who are assigned to work in Germany for a fixed-term.

5.3. Private insurances

As far as neither the German nor the Chinese statutory social insurance provisions are applicable and as far as the applicable law does not provide for sufficient benefits, such a gap should be bridged by (additional) private insurances. As a residence title for Germany always requires a sufficient health insurance, it must be carefully assessed before the secondment whether the health insurance in place is sufficient in the meaning of German immigration law or if an additional private health insurance is necessary.

6. Taxation

6.1. Individual income taxation in Germany

The German taxation scheme for individuals is composed of an income tax, a solidarity surcharge, and where applicable, church tax. Individuals residing in Germany are subject to tax on their worldwide income unless exempt under the provisions of a tax treaty. This principle is known as the concept of unlimited tax liability. The maximum tax rate in Germany is 45 percent plus a solidarity surcharge of 5.5 percent on the income tax. In addition, the individual may be liable to pay church tax at 8 percent or 9 percent on the income tax. Non-residents are subject to tax on certain categories of income from German sources under the concept of limited tax liability. Herein, the home country refers to the location where an individual worked prior to the international assignment. The home country may or may not be the individual's country of citizenship, whereas the host country refers to the location across national borders to which the individual is temporarily assigned.

6.1.1. Taxable persons

Residents are liable for payment of income tax on their worldwide income. Non-residents are generally liable for payment of this tax on certain German-source income. An individual is, regardless of his nationality, a resident of Germany if his domicile or habitual place of abode is in Germany.

- A domicile is a home or dwelling owned by or rented to the individual who has full control over that property. Domicile is a question of fact and is not determined by the intention of the individual.
- The habitual place of abode is established when an individual is physically present in Germany on a continuous basis (more than six months). A continuous abode is established and maintained if the interruptions are for a short period only (such as holidays, journeys home and business travel), so that the stay is still regarded as one continuous stay.

Resident spouses living together are assessed jointly, unless they elect to be assessed separately. Income of children is not included in the taxable income of their parents but is taxed as individuals separately.

6.1.2. Taxable income

Resident individuals are subject to income tax on their worldwide income falling under one or several of the following categories. Foreign-source income derived by resident individuals is generally subject to income tax in the same manner as domestic income:

(1) income from agriculture and forestry;
(2) income from a trade or business;
(3) income from independent professional services;
(4) income from employment, including compensation from past employment;
(5) income from capital investment;
(6) rental income from immovable property and certain forms of tangible movable property and income from royalties; and

(7) other income (gains from private transactions, alimony, annuities, etc.).

The method used to compute taxable income depends on the category of income. For categories (1) and (2), the general methodology is the net worth comparison method, according to which taxable income is the difference between the net worth of the assets at the end of the business year and that at the end of the preceding business year. The general method for the other categories is the net income method, under which taxable income is computed by reducing gross income by related expenses in accordance with the cash receipts and disbursement method. For category (3), the net worth comparison method applies if the individual so elects. The net results of all categories are aggregated. The aggregate income, less personal deductions, is the taxable base to which the allowances and rates are applied. From 1 January 2009, income from private capital investment (category 5) is generally taxed separately by way of a final flat withholding tax of 25 percent plus solidarity surcharge 5.5 percent. Upon application, income from private capital investment can be included in the assessment and taxed at a lower individual tax rate. Foreign-source income, independent of category, derived by resident individuals is generally subject to income tax in the same manner as domestic income.

Non-residents are subject to German income tax with respect to German-source 'income explicitly listed in the law'. The computation of income of non-residents follows the rules which apply to the computation of income of residents. It should be noted, however, that most of the allowances granted to residents are not granted to non-residents, e.g. business expenses and income-related expenses are only deductible if economically connected with the employment income taxable in Germany. If an individual becomes resident or non-resident during a year, German-source income derived during the period of non-residence is added to the income derived in the period of residence. This means that the individual is taxed as a resident in respect of all German-source income derived during that year.

Before leaving Germany, an individual has to inform the registration office. In addition, employees must inform the competent tax authorities in case their move requires a change of a tax class (please see section 6.6 below). Beyond this, no further exit requirements exist for tax purposes, i.e. no declaration has to be filed with the tax office before leaving the country. There are no special payment procedures on termination of residence, and no tax clearance is required. After leaving Germany, the individual is no longer subject to unlimited German taxation, but may be taxed as a non-resident on income from German sources. There is no special filing requirement on termination of residence. In the year following the termination of residence, the individual has to file an income tax return for the prior year under the normal rules covering the residence period and the period after the move during the tax year. If the individual receives income from German sources as a non-resident in later years, the individual must file an annual tax return covering this income, unless it was subject to withholding tax. In case of extraordinary income (e.g. stock unit programs for more than one year) a wage tax withholding may not be final and the non-resident has to file an annual tax return including the world wide income for progression purposes (Please see section 6.5.1 below).

6.2. Assignment of employees from China to Germany

6.2.1. Employment income

As a rule, it can be stated that all types of remuneration and benefits received by an employee for services rendered constitute taxable employment income. These include, but are not limited to, the items below:

- salaries, wages or bonuses for services rendered
- reimbursements/payments of foreign and/or home country taxes
- reimbursements/payments of school tuition fees
- reimbursements/payments of tax return preparation fees
- reimbursements/payments of home leave costs
- cost-of-living allowances
- expatriate premiums
- housing allowances and the imputed value of housing provided directly by the employer
- all benefits in kind generally form part of taxable compensation
- incentive compensation in certain circumstances

Certain benefits, however, are subject to a favorable method of taxation or can be exempt from taxation under certain conditions, most common are:

- housing costs at the place of work (either actual costs or limited to EUR 1,000 per month depending on the classification of the activity in Germany as a “long business trip” or the establishment of a ”double household” in Germany)
- per diems up to EUR 28 per day within a three months period (for the same activity). An interruption of this activity of minimum four weeks will be required to reset this three months period.
- home leave trips for the employee to China depending on the classification of the activity (see above)
- ticket(s) for public transport up to certain limits and tax-free as of 1 January 2019, if granted in addition to contractual salary
- company, rental or pool car exclusively used for business purposes in Germany

If foreign service premiums or bonuses are paid as inducements to accept an assignment before the tax year in which the individual arrives in Germany and becomes a resident, such payments are taxable at non-resident rates. If the foreign premiums or bonuses are paid in the same calendar year in which the individual becomes resident, these payments are taxable at resident rates together with other income earned in the year.

Overtime pay is generally taxable. However, overtime pay for work performed on Sundays, bank holidays and at night is not taxable if it is paid in addition to basic wages and does not exceed certain percentages thereof. Certain expense allowances are exempt up to certain ceilings (e.g. per diems).

Overview tax-free overtime pay

Dates & time	% of salary*
Night work (8 pm to 6 am):	25
Night work (12 am to 4 am):	40
Sunday work (complete day, even until Monday 4 am if the work started before 12 am):	50
Bank holiday work (complete day, even until next day 4 am if the work started before 12 am):	125
Work on 24 December (after 2 pm) , 25 and 26 December as well as 1 Ma :	150
31 December (after 2 pm):	125

*) Tax-free rates for Sundays and bank holidays cannot be applied cumulatively but the higher tax-free rate will be applied.

German income tax law does not provide for special deductions or tax-free expatriate premiums. German nationals and foreigners are treated equally for tax purposes .

6.2.2. Benefits in kind

Benefits in kind received or enjoyed from an employment in addition to the regular salary are categorized as income from employment and normally valued at market price, including VAT. A ruling which fixes the value of certain benefits, e.g. housing and food, is issued annually. The following examples represent common benefits in kind:

Company car

The benefit enjoyed from using a company car also for private purposes is taxed at 12 percent per year (1 percent per month) of the German list price of the car, including any special equipment and VAT). If the car is used for commuting between home and work, an additional rate of 0.36 percent (0.03 percent per month) for each kilometer of distance between home and work (for one-way trip only) applies. Alternatively, the benefit may be assessed on the basis of a logbook.

To support electro-mobility, the taxation of company cars for private purposes is halved (hybrid plug-in) or quartered (pure electric car) under certain conditions to be met.

Stock options

Stock option plans or other kinds of equity compensation have become common features of compensation schemes. German income tax law does not recognize the granting as a taxable event. Instead, the exercise of a stock option or receipt of other equity compensation generates ordinary income from employment. The taxable value of stock options is the difference between the lowest fair market value at the date of exercise of the shares and the option price. If a tax treaty applies, sourcing is determined in the 'grant to vest' time span. A favorable tax rate may apply on such income (one-fifth method).

6.2.3. Director's remuneration

A director is treated as an employee if he is a managing director and a member of the management board. This means that he must include all remuneration in his tax return as income from employment in the normal manner. If the individual is a member of a supervisory board without any managerial duties, his income is treated as income from professional services.

6.2.4. Double Tax Treaty with China

Germany has concluded a Double Tax Treaty with China (DTT) covering employment income. To apply tax-ation regulations of employment income, the individual's residency according to the DTT is decisive. Article 4 defines where an individual is resident according to the DTT. Therefore, treaty residency is determined by residency and domicile under local laws resulting in a local tax liability. If an individual is a resident of both states, a permanent home, the center of vital interests (closer personal and economic ties), a habitual abode or the individual's nationality is decisive (in this order). Once the treaty residence is determined, Article 15 stipulates the taxation of employment income:

Employment income received from a resident of one contracting state (e.g. China) is taxable only in this state unless the employment is exercised in another contracting state (e.g. Germany). If the employment is so exercised, such employment income may be taxed in the other contracting state (e.g. Germany). However, employment income derived by a resident of a contracting state (e.g. China) in respect to employment exercised in the other contracting state (e.g. Germany) shall be taxable only in the country of residence (e.g. China), if:

a) the employee is present in the other state (e.g. Germany) for a period not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
b) the employment income is paid by, or on behalf of, an employer who is not a resident of the other state (e.g. Germany), and
c) the employment income is not borne by a permanent establishment or fixed base which the employer has in the other state (e.g. Germany).

If an employee assigned from China to Germany is a resident of Germany according to the DTT, or if one of these conditions is not fulfilled, Germany has the right to tax the employment income. The extent of taxation (full amount of employment income or employment income in relation to working days) needs to be assessed according to individual circumstances. For example: An employee is assigned from China to Germany for a period of one year and exercises activities in Germany on 170 of 220 total work days during any 12 month period. The center of vital interests remains in China and the employee is treaty resident in China according to the German interpretation of the treaty. The costs for the assignment are borne by the German legal entity. As a result, Germany would tax the income at the ratio of the above travel pattern (170 taxable days in Germany and 50 days in China which are deemed to be tax-free in Germany).

The definition of the treaty employer (b) includes both the civil and economic employer definition. Under this definition, the host company (located in the state in which the employment is exercised) is the economic employer if costs for the employment are borne or should have been borne at arm's length by the host company, the employee is integrated and the host company bears the risk of the work results. This is normally the case if employees are assigned from their home company to a group company in another state. However, if an employee works for the host company for only three months or less, there is a tendency to assume that the host company should not be regarded as the individual's economic employer, unless the individual was fully integrated in the host company's business operations during this time. For this, it needs to be considered which company bears the responsibility and risk for the individual's work. Following outlines some questions which may be relevant for the assessment:

a) Which company has the disciplinary authority?
b) Which company has the authority to provide work instructions?
c) Which company has the responsibility for the work place?
d) Which company puts the working tools and materials at disposal?
e) Which company determines the number and qualifications of the individuals performing the work?
f) Which company has the right to select the individuals and to terminate the service agreement?
g) Which company determines the holidays and work schedule of the individual?

Income derived as a member of the management board (board of directors) falls under Article 15, like regular employment income, whereas fees for members of the supervisory board are treated as income from self-employment (Article 16). The fees of a member of a supervisory board are generally subject to value-added tax at a rate of 19 percent.

Due to Covid-19 the value added tax was reduced between 1 July and 31 December 2020 to a rate of 16 percent.

Article 23 stipulates that employment income taxable in China is tax-free in Germany. However, this income might be taken into account when calculating the German individual tax rate (so-called progression clause).

6.3. Business and professional income

For income from agriculture and forestry (income category 1) and income from a trade or business (income category 2), the general method to compute taxable income is the net worth comparison method, according to which taxable income is the difference between the net worth of the assets pertaining to the category at the end of the business year and that at the end of the preceding business year. However, if the annual profits of the category do not exceed EUR 60,000 and turnover does not exceed EUR 600,000, the net income method may be chosen. Under the net income method, taxable income is computed by reducing the gross income by related expenses in accordance with the cash receipts and disbursement method. Expenses for immovable property, shares and similar rights may only be deducted in the tax year in which the asset is sold. Under both methods, expenses incurred in producing taxable income are generally deductible. Restrictions apply, in particular, with respect to expenses of a personal character (gifts, guest houses, etc.), and expenses for travelling between home and the place of work using a company car (the same limits as

for employees). The net income method is the regular method for income from professional services (income category 3); the net worth comparison method applies only if the individual so elects. Dividends and other profit distributions from shares held as business assets benefit from the partial-income system; the general regulation for income of category 5 does not apply.

Under the Double Tax Treaty (Article 14), income from independent professional services is taxed in the state of residency (e.g. China) unless exercised in another state (e.g. Germany). If exercised in another state (e.g. Germany), income from independent professional services is taxable in the other state (e.g. Germany) if:

- the individual exercising independent personal services has a fixed base regularly available in the other state (e.g. Germany) for the purpose of performing the activities; activities attributable to this fixed base might be taxed in the other state (e.g. Germany)
- the individual is present in the other state (e.g. Germany) for a period amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in this case, the income derived from performing activities in the other state (e.g. Germany) might be taxable in the other state (e.g. Germany).

6.4. Deductions, allowances and credits

The following are standard deductions for each of the specified types of income:

Overview standard annual deduction in 2020

	EUR
Standard annual investment deduction for single / married	801 / 1,602
Standard employment deduction per individual	1,000
Standard pension payment/other income deduction per individual	102
Standard special expense deduction for single / married	36 / 72

Furthermore, a series of non-income-related deductions are granted. The most important are:

- standard deductions apply (see chart above)
- payments to public, mandatory pension insurance (cap)
- payments to public or private health and nursing insurance for basic insurance coverage
- expenses for the individual's professional education
- 30 percent of contributions to private schools up to a maximum amount of EUR 5,000 (on certain conditions)
- church taxes (in the year of payment)
- charitable contributions to German charities and charitable activities abroad if certain conditions are met (limited to the lesser of the amount incurred or 20 percent of income from different classes)

- under special circumstances, further deductions are available, for example certain education expenses, support expenses, and deductions for disabled individuals as well as additional insurance contributions.

Child-related deductions

For the first and second child, a monthly benefit of EUR 204 is paid. The monthly benefit amounts to EUR 210 for the third child and EUR 235 per child from the fourth child onwards. Payment is dependent on certain conditions' being met and is adjusted annually. If the individual does not qualify for the monthly child benefit, or if the tax savings from the tax-free allowance for children exceed the child benefit, then the following deductions can be claimed instead on the annual tax return for single/married individuals.

Tax-free allowance for children in 2020

Age	EUR single / married
0 - 17 years	3,906 / 7,812
18 - 25 years (e.g. if attending university/school/vocational training)	3,906 / 7,812
18 – 25 years if attending university/school, etc., and not living at home in addition	924

Parents can offset two-thirds (up to EUR 4,000) of the expenses for childcare per child per year if the child is under age 14, and for disabled children between age 14 and 25 in the return.

Other deductions

Alimony payments to a divorced or to a separated spouse who is a resident of Germany, another EU Member State or certain treaty countries can be deducted as personal expenses up to a maximum amount of EUR 13,805 per year if certain requirements are met. Additionally, basic health and nursing contributions which are paid for the supported person are deductible. The alimony payment constitutes taxable income on the part of the recipient.

Supporting payments to dependents (e.g. family members) who are not resident in Germany can be deducted under certain conditions up to a maximum amount of EUR 9,408 per year, if this is applied for. If the other annual income of the recipient exceeds EUR 624, the deductible amount is reduced by the excess over EUR 624.

Individuals deriving business income, which is subject to both individual income tax and business tax, are granted a lump-sum credit against individual income tax. The maximum effect is that no income tax is due on the business income.

Tax credits are available for domestic help provided by certain employed and self-employed persons. The maximum credit is the lower of 20 percent of expenses and EUR 4,000. In order to qualify for a tax credit,

the respective expenses must not qualify as a deduction for determining taxable income (i.e. no double benefit). The limits apply per household.

Tax credits are also available for craftsman services. The maximum credit is the lower of 20 percent of expenses and EUR 1,200. The credits cannot result in a refund.

Tax credits for domestic help provided by certain employed and self-employed persons and tax credits for craftsman services are not applicable in case the household is in China or any other third country.

Business expenses related to employment income

Expenses incurred in carrying out employment can be deducted from gross salary. These expenses include commuting expenses, expenses for tools or other work equipment, certain membership dues, and certain away-from-home expenses. The deduction is generally not limited. If the employee does not claim higher itemized business expenses, a standard annual deduction for income-related expenses of EUR 1,000 is granted.

Most common business expenses:

- Expenses for a second household up to EUR 1,000 per month can be deducted or reimbursed tax-free in case the family home is maintained and the family stays at home (e.g. in China) and a second household is necessary (in Germany). Also, expenses for home trips, e.g. flights, are deductible (no limit). This is possible under the concept of being on a long business trip away from home or the concept of a double household.
- For commuting between home and work, a standardized deduction of EUR 0.30 per km (one way) per day applies regardless of the means of transport used and whether or not actual expenses were incurred (As of 2021 the standard deduction increases to EUR 0.35 per km from the 21st km). The maximum amount of the standardized deduction is EUR 4,500. However, there is no limit if a private car or company car is used.
- Domestic moving expenses under certain conditions and international moving expenses (move to Germany) are deductible as business expenses. The reimbursement of such expenses is exempt up to the amount that a comparable civil servant would receive.
- Expenses for tax-advisory services in the home and host countries.
- Costs of up to EUR 1,250 for the individual's office at home are deductible if there is no other office place available for the individual's professional activities. The actual costs for a taxpayer's office at home are, however, deductible if such office is the center of the individual's professional activities.
- Contributions to professional and trade associations.
- Expenses for working tools and working clothes (if they can only be used in a professional environment, e.g. laboratory gloves).

Expenses solely related to tax-free income are not deductible, e.g. business expenses and income-related expenses are only deductible if economically connected with employment income taxable in Germany. However, these expenses reduce the tax-free income under the progression clause, if applicable.

6.5. Tax rates

6.5.1. German income tax rates

Individual income tax is imposed at progressive rates under complex tables. An abbreviated table is presented below (for 2020). A 5.5 percent solidarity surcharge is levied, and an 8 percent or 9 percent church tax might be levied on the amount of tax computed according to the tables. As of 2021 the solidarity surcharge will be cancelled for approx. 90 percent of the taxpayers dependent on income; solidarity surcharge on capital investment income will continue to be levied.

Resident tax rates also apply to non-residents (except church tax). Non-residents are generally not allowed to file as married persons (whereas special rules for EU citizens exist).

If an individual becomes resident or non-resident during a year, German-source income derived during the period of non-residence is added to the income derived in the period of residence to calculate the German tax rate (the so-called 'progression clause'). This might result in a higher German tax rate.

6.5.2. Single taxpayers

Income tax table 2020 for single taxpayers

Taxable income brackets		**Tax rate (%)***
From EUR	To EUR	
0	9,408	0
9,409	57,051	14 – 42**
57,052	270,500	42
270,501	No limit	45

*) Excluding solidarity surcharge and church tax, if applicable

**) Progressive rates starting at 14% to 42%

6.5.3. Jointly assessed spouses or civil partners

Income tax table 2020 for Jointly assessed spouses or civil partners

Taxable income brackets		**Tax rate (%)***
From EUR	To EUR	From EUR
0	18,816	0
18,817	114,102	14 – 42**
114,103	541,000	42
541,001	No limit	45

*) Excluding solidarity surcharge and church tax, if applicable

**) Progressive rates starting at 14% to 42%

6.5.4. Other taxes on income

Up to and including 2020, a solidarity surcharge of 5.5 percent is levied on the income tax due, but not on business tax. It is computed on the total tax due after deducting tax credits, i.e. foreign tax credits. In addition, the solidarity surcharge increases the withholding taxes imposed on payments to both residents and non-residents.

Resident members of a church that is recognized for church-tax purposes are required to pay a church tax at a rate of 8 percent or 9 percent on their income tax payable, depending on the federal state in which the individual is resident. The tax is collected by the tax authorities.

Inheritance and gift tax is assessed on the transfer of property by reason of death, gifts during lifetime, and transfers for certain specified purposes, as well as on the net worth of certain family foundations or trusts. Worldwide assets are potentially subject to this tax if the transferor or the transferee is resident in Germany at the point in time when the inheritance or gift occurs. Otherwise, it applies only to assets situated in Germany. Taxable transfers of property are subject to inheritance and gift tax at graduated rates, depending on the value of the property and the family relationship of the respective individuals. The family relationship determines the tax-tax free amount applicable to calculate the taxable value (between 500,000 EUR and 20,000 EUR) and tax rates. The rates vary from 7 percent up to 50 percent.

- Tax class I: Spouse, civil partner, children, stepchildren, grandchildren, great-grandchildren, parents (in case of inheritance)
- Tax class II: Siblings, nieces and nephews, parents (in case of gift), stepparents, parents/sons/daughters-in-law, divorced spouses
- Tax class III: Other

Inheritance and gift tax table 2020

Value in EUR up to	Tax class I %	Tax class II %	Tax class III %
75,000	7	15	30
300,000	11	20	30
600,000	15	25	30
6,000,000	19	30	30
13,000,000	23	35	50
26,000,000	27	40	50
>26,000,000	30	43	50

Real estate tax is levied on the assessed value of the property using the basic rate of 0.35 percent. Municipalities apply their respective multipliers to the resulting base amount to arrive at the final tax due.

The standard VAT rate for supplies of goods and services is 19 percent. For certain goods and services, the VAT rate is 7 percent, e.g. certain foods, books and magazines, flowers and transports. From 1 July 2020 until 31 December 2020 the VAT rate is reduced to 16 percent/5 percent to compensate the impact of Covid-19.

Real estate transfer tax is generally imposed on any transaction that causes a change in the ownership of real estate property situated in Germany. The tax rate is generally 3.5 percent (up to 6.5 percent in some federal states).

Local taxes are levied only on income from trade or business.

Since 1997, a wealth tax has not been levied in Germany.

6.6. Employer's obligation to withhold tax

Taxes on employment income are settled by wage tax withholding if the remuneration is paid by an employer either having:

- a residence
- habitual abode
- place of management
- place of business
- permanent establishment or
- permanent representative in Germany (domestic employer).

However, a German entity is also obliged to withhold wage taxes from an employee's remuneration that is paid abroad if the German entity qualifies as the economic employer.

Economic employer approach:
In a typical intra-group assignment, the employee remains formally employed with the home entity (e.g. in China), whereas services are exercised for the host entity (e.g. in Germany). In case the costs for the employment are borne or should have been borne at arm's length by the host company, the employee is integrated and the host company bears the risk of the work results, the German entity is defined as economic employer, resulting in a tax withholding liability. This definition covers the economic employer approach on the level of the Double Tax Treaty (please see section 6.2.4 above).

The German wage tax is a monthly withholding tax on employment income to employees (pay-as-you-earn). The wage tax is qualified as prepayments of the income tax for German tax residents. It is refundable to the extent it exceeds the tax finally assessed after filing the individual income tax return. For German non-

resident taxpayers, the wage tax is generally the final amount of tax on employment income except of employment income which is taxed as extraordinary income. The wage tax is collected at the source from employment income and paid directly to the German tax authority by the employer. In case the individual remains on the payroll in the home country, a so-called 'shadow payroll' needs to be processed in Germany.

Employees are subdivided into tax categories for wage tax purposes. The tax category is the basis used to determine the amount of wage tax withheld from employment income. It depends, among other things, on marital and family status and on whether there are other employment contracts subject to wage tax withholding.

Wage tax categories:

- Tax class I – Applies to employees who are single, divorced, widowed or married, unless they fall under tax class II, III or IV and upon receiving a personal tax ID number for non-resident employees.
- Tax class II – Applies for single parents, living alone with a child/children, for as long as they are entitled to the solo-parents' allowance in Germany.
- Tax class III – Applies, upon request, for married employees and registered civil partnerships. This tax class is generally favorable for the spouse whose salary is higher.
- Tax class IV – Applies to married employees and registered civil partnerships. This tax class is usually used if both spouses have a similar salary.
- Tax class V – Applies to one of the spouses/partners instead of tax category IV if the other spouse/partner is classified under tax category III.
- Tax class VI – Applies to employees receiving multiple wages from more than one employer, e.g. second and any additional employment contract and to non-resident employees who have no tax identification number.

Further, the tax-free allowance for children – if relevant – will be considered for withholding purposes (only for solidarity surcharge and church tax, if applicable). The individual wage tax conditions are stored in a central database and provided to the employer electronically for tax residents. However, non-resident taxpayers without a tax identification number are not able to participate in the process for residents and fall automatically in tax class VI (most unfavorable). Therefore, it is recommended that non-resident taxpayers apply for an individual tax identification number at the tax office in whose district the company is resident.

In addition to wage tax, the employer also has to withhold social security contributions. The social security contribution consists of four types of insurance (pension insurance, unemployment insurance, health insurance and nursing care insurance) for which the contributions are shared almost equally between employer and employee. The social security contributions only have to be paid on wages up to certain social security thresholds (please see section 5 above).

6.7. Administration of individual income tax

6.7.1. Taxable periods

The tax year is the calendar year. However, for income from a trade or business, the tax-payer may choose a tax year that is different from the calendar year (financial year), in which case the income of the financial year is taxed as income of the calendar year in which the financial year ends.

6.7.2. Tax returns and assessments

In general, income tax is assessed by calendar year after filing an individual tax return. Married couples can file tax returns jointly or as separate individuals.

Tax returns up to and including the calendar year 2020 must be filed with the local tax office by 31 July of the following year. An extension until the end of February of the year after is automatically granted if a professional tax adviser is engaged to prepare the return. A further extension may be available by special request. However, the tax authorities may request, on an individual basis, that the return be filed before these dates.

Due to Covid-19 a further extension until the end of August 2021 has been granted for 2019 tax returns in case a professional tax adviser is engaged to prepare the return.

If tax returns are not filed on time, the tax authorities will automatically assess late-filing penalties if the assessment leads to a final tax payment (instead of a tax refund). The penalties rate is at 0.25 percent of the assessed tax due with a minimum of 25 EUR per month of delayed filing.

The income tax is not payable at the time the tax return is filed. The tax authorities will issue a final tax assessment notice once they have processed the return. Any balance due is payable within one month after receipt of the tax assessment notice. Interest is charged or credited on final payments if the tax assessment notice is not issued within 15 months after the end of the respective calendar year. The applicable rate is 0.5 percent for each full month after the 15th month. Due to Covid-19 the interest for the year 2019 will not be issued before 1 October 2021. Penalties for late payment after receipt of the tax assessment notice are 1 percent per month of the unpaid amount.

The tax office can assess quarterly prepayments based on the prior year's tax or on estimates of income not subject to withholding tax. These prepayments are due quarterly on 10 March, 10 June, 10 September, and 10 December.

Non-residents are subject to tax on certain categories of income from German sources under the concept of limited tax liability. If the income from employment is subject to wage tax withholding, the tax obligations are generally fulfilled with the withholdings (except of receiving extraordinary income), and no German tax return needs to be filed. There might be other sources of income, however, that require a tax return filing.

6.7.3. Payment of tax

Taxes are collected during the year either by wage tax withholding (processed by employer) or by individual prepayments. The tax withheld and the prepayments are credited against the final German income tax liability. Any excess will be refunded; any shortfall must be paid within one month of receipt of the assessment notice.

If the employer is a German company or a foreign enterprise with a permanent establishment or a representative in Germany, the employer is legally obliged to withhold taxes from an employee's salary and to remit the taxes to the tax office monthly (10th day of the following month). For non-residents, the tax obligations are fulfilled with the wage tax withholding procedure.

6.7.4. Consequences of not registering and paying wage tax

The employee is the debtor of the wage tax, whereas the employer (or the employer's legal representatives, as the case may be) is liable for wage tax payments. The employer is fully liable with the company's total assets including the personal liability of the members of management. Failure – even an attempt is punishable – to comply with the law concerning wage tax withholding might lead to legal actions taken by the authorities and can include fines and/or imprisonment, depending on the seriousness of guilt. Personnel specialists, payroll specialists or CEOs responsible (among others) might be involved if they deal with or are responsible for the wage tax withholding process of their company.

To avoid the aforementioned consequences, a voluntary disclosure could be filed proactively with the competent tax authorities to inform them about a failure concerning wage tax withholding and including a calculation of the outstanding amount of tax due. However, as the law has been changed lately, a number of conditions must be met to be able to file a voluntary disclosure successfully. The most relevant conditions are:

- The employer has to indicate the omission without undue delay.
- All incorrect or incomplete circumstances which lead or have already led to a reduction of tax, have to be included.
- The disclosure has to be filed before these circumstances are discovered by the tax authorities, an audit instruction or criminal tax proceeding.
- The evaded taxes including interests have to be paid until the assessed payment due date after filing.

6.8. Taxation of permanent establishments of Chinese corporations in Germany

6.8.1. General introduction

Above, we have mainly focused on the German tax implications for employees in assignment scenarios. In this chapter, attention is given to the tax implications for companies which assign employees to Germany.

Taxation of foreign companies in Germany is defined by domestic tax law as well as the Double Tax Treaty (DTT) between China and Germany. In both of which the so-called "permanent establishment principle" is applied as a general principle of international tax law. For Chinese companies with activities in Germany, the permanent establishment principle is relevant for corporate income tax (CIT) as well as trade tax (TT), value added tax (VAT) and wage tax (WT) because this criterion is applied for the allocation of income to the countries of residence and source.

Pursuant to the specific rules in German tax law outlining the permanent establishment principle, an employee assignment may under certain circumstances constitute such permanent establishment in Germany. However, the German taxation right regarding the profits allocated to the permanent establishment may be restricted by the provisions of the applicable DTT between China and Germany. In addition to the income tax consequences of an assignment, it is also necessary to ensure that other tax consequences are also taken into account, for example:

- Wage tax
- Social insurance contributions
- Value added tax

Section 6.8.2. will provide an overview of the relevant domestic tax rules and describe how taxation is carried out according to domestic law. In the next step, these provisions will be supplemented by the DTT between China and Germany (please see section 6.8.3 below). Taking into account both domestic and international tax law, methods for determining the allocation of profits and the determination of the taxable income will be introduced (please see section 6.8.4 below).

6.8.2. Definition according to German domestic law

An international assignment is generally characterized in practice as a temporary secondment of employees of a foreign company to an affiliated company resident in Germany. This needs to be distinguished from foreign operations which do not take place on the basis of existing structures. These include, in particular, international business travel and short-term project and construction site missions abroad.

Under certain circumstances, an employee's foreign activity can result in the creation of a connecting factor for taxation under domestic tax law. In this context, it needs to be distinguished between a permanent establishment and a permanent representative.

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Permanent establishment

According to German tax law, a permanent establishment is any fixed place of business or facility that serves the business of an enterprise. The term "permanent establishment" includes without limitation the following:

1. the place of management,
2. branches,
3. offices,
4. factories and workshops,
5. warehouses,
6. points of purchase or sale,
7. mines, quarries, or other fixed, geographically shifting, or floating places of extraction of natural resources,
8. building sites or sites of construction, assembly, or installation work, even if geographically shifting or floating, where
   a) the specific building, construction, assembly, or installation project or
   b) any of several contemporaneous building, construction, assembly, or installation projects, or
   c) two or more building, construction, assembly, or installation projects that follow one upon the other without interruption

   last longer than six months.

There is no detailed guidance published by the German tax authorities in this respect. Based on the view of the German Federal Fiscal Court and the prevailing literature, the following characteristics are decisive for the constitution of a permanent establishment:

Fixed place of business

- To be considered as a fixed place of business, a facility has to be spatially limited and fixed locally. Furthermore, the foreign company's own business activities must be performed at this place.

Sustainability

- Sustainability requires that the activity of the enterprise in the other state is not only of temporary nature, but is intended to be exercised with a certain consistency. This is generally assumed if the activities last for more than six months. Therefore, the timing of the start and the end of the activities in Germany should be observed precisely.

Power of disposition

- Power of disposition is a prerequisite for the company to have a certain legal position in relation to the permanent establishment. The fixed place of business does not necessarily need to be owned by the foreign company. A rental contract or another legal position may be sufficient.

Based on the aforementioned requirements, a regular assignment of a Chinese employee to a German company may likely not result in the creation of a permanent establishment in the sense of German tax law.

However, this does not mean that a permanent establishment cannot be established by carrying out an international assignment. In particular (but not limited to), two scenarios may result in the constitution of a permanent establishment.

On the one hand, the employee may be assigned to provide services to a German subsidiary on behalf and for the benefit of the Chinese company. To actually create a permanent establishment in such scenario, the aforementioned criteria have to be fulfilled. For example, the Chinese company would need to have the power of disposition over a fixed place of business and the employee must not be integrated into the organization of the German entity.

On the other hand, an employee may create a foreign company's permanent establishment in Germany in case he or she is assigned to the German company without being fully integrated in the German organization and carries out a business on behalf of the Chinese company. Again, the Chinese company would also need to have the power of disposition over a fixed place of business.

Thus, in order to mitigate the risk of the creation of a permanent establishment in Germany in case of international employee assignments, all relevant facts should be carefully observed and the assignment should be thoroughly structured accordingly. For instance, by way of contractual design, the area of activity may be clearly defined and the potential power of disposition of the Chinese company may be excluded.

Permanent representative

As mentioned above, German tax law distinguishes between a permanent establishment and a permanent representative. The latter partially corresponds to the dependent agent concept as included in the DTT as one variation of a permanent establishment.

According to the law, a permanent representative is a person that transacts business for an enterprise on an ongoing basis and, in so doing, is subject to its substantive instructions. The term "permanent representative" includes in particular persons who on an ongoing basis do the following for an enterprise:

- enter into or solicit contracts or obtain orders, or
- maintain a stock of goods or merchandise and make deliveries from this stock.

Based on this definition, a seconded employee of a Chinese company may in certain cases be regarded as a permanent representative.

6.8.3. Definition according to the Double Tax Treaty between Germany and China

In case a permanent establishment is established according to German domestic tax law, the relevant provisions of the applicable DTT need to be taken into account in order to determine whether the German taxation right with regard to the profits of the permanent establishment is restricted. Thus, the provisions of the DTT are decisive for the allocation of the respective taxation right. However, in case the assignment of a Chinese employee does not constitute a permanent establishment pursuant to German domestic tax

law, the DTT will not be relevant as its provisions may only restrict taxation rights resulting from the application of domestic tax law but may not establish taxation rights.

According to the DTT, a permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term "permanent establishment" includes especially:

- place of management;
- a branch;
- an office;
- a factory;
- a workshop, and
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

The term "permanent establishment" likewise encompasses:

- A building site, or construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;
- The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

Certain activities of preparatory or auxiliary nature such as storage, delivery and purchasing goods shall not constitute a permanent establishment according to the DTT as opposed to the permanent establishment concept under German domestic law.

Furthermore, where a person – other than an agent of an independent status – is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in that Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to certain activities of preparatory or auxiliary nature (see above) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment.

In the relevant context of employee assignments, the definition of a permanent establishment/permanent representative under German tax law broadly corresponds to the definition of a permanent establishment included in the DTT with two major exceptions. On the one hand, the concept of a service permanent establishment as included in the DTT has not been implemented in German domestic tax law. Thus, a permanent establishment cannot be established in case of employee assignments which fulfil the criteria of such service establishment, but do not fulfil the requirements of a permanent establishment pursuant to German tax law. On the other hand, the concept of a dependent agent as included in the DTT is more narrowly defined compared to the concept of a permanent representative pursuant to German tax law. For example,

an authority to conclude contracts in the name of the enterprise as required under the DTT is not required to be regarded as a permanent representative.

6.8.4. Taxable income

If a German permanent establishment is created by a Chinese company in the course of an employee assignment, the taxable income needs to be determined. The company would be subject to the limited tax liability with its domestic income generated by the permanent establishment. The basis for the profit determination is set out in Section 1 Para. 5 German Foreign Tax Act (Außensteuergesetz) which is applicable since 2013. The same principles also apply in case of a permanent representative.

In 2014, the German Federal Ministry of Finance has published a decree on the application of the arm's length principle to permanent establishments pursuant to Section 1 Para. 5 Foreign Tax Act (Decree on the Attribution of Profits to Permanent Establishments (Betriebsstättengewinnaufteilungsverordnung or BsGaV)). In 2016, another decree was published which deals with various issues of the law and the BSGaV and provides for a more detailed guidance.

Pursuant to Section 1 Para. 5 German Foreign Tax Act, the so-called Functionally Separate Entity Approach applies to the cross-border profit determination of permanent establishments, i.e. profit attribution between a domestic enterprise and its foreign permanent establishment or a domestic permanent establishment of a foreign enterprise is in principal effected just as between two independent enterprises.

The treatment of the permanent establishment as a separate and independent enterprise requires a two-step procedure for the determination of profits and the attribution of profits to permanent establishments:

First step: function and risk analysis of the business activity of the permanent establishment

- Determination of the (relevant) personnel functions to be attributed to the permanent establishment;
- On the basis of the (relevant) personnel functions, assets, opportunities and risks, dotation capital as well as remaining liabilities are to be attributed to the permanent establishment;
- Business transactions of the enterprise with third parties and with closely related persons need to be attributed to the permanent establishment;
- Determination of the deemed contractual relationships ("dealings") maintained by the permanent establishment with the rest of the enterprise.

Second step: comparability analysis of the business activity of the permanent establishment

On the basis of a comparability analysis, transfer prices are to be determined in consideration of the arm's length principle for the business relationships of the permanent establishment.

Since the assessment period 2015, permanent establishments are obliged to maintain an auxiliary and ancillary tax account and complete it by the date of submission of the tax return. This is based on the function

and risk analysis to be performed. The auxiliary and ancillary tax account is associated with significant opportunities and risks. Furthermore, it is pointed out that the taxpayer, regardless of the auxiliary and ancillary tax account, is also generally obliged to submit a truthful tax statement.

Generally, pursuant to German tax law, the Functionally Separate Entity Approach applies to the cross-border profit determination of permanent establishments irrespective of whether this approach is implemented in the DTT. However, to the extent that the Functionally Separate Entity Approach is not implemented in the applicable DTT and the taxpayer furnishes proof that the other contracting state exercises its taxation right in line with the provisions of the DTT and thus, the application of Section 1 Para. 5 Foreign Tax Act would lead to double taxation, the DTT approach applies.

As regards the DTT between China and Germany, the Functionally Separate Entity Approach has not been implemented. The relevant provisions are based on the old OECD Model Tax Convention 2008. However, at least the protocol with reference to Article 7 DTT China-Germany includes the willingness to refer to the OECD Model Commentary on the OECD Model Tax Convention 2008 in interpreting and applying the provisions of the Permanent Establishment Article.

According to the decree issued by the German Ministry of Finance, it is generally not expected that China as a non-OECD member state follows the principles of the attribution of profits to permanent establishments as implemented in German tax law. However, the taxpayer is still obliged to furnish proof that there is double taxation.

In the specific scenario of an employee assignment creating a permanent establishment, wage costs and other personnel expenses which can be directly allocated to the assigned employee should be included in the calculation of the permanent establishment's profits. This is also decisive for the taxation of the employee's income as the DTT also assigns the taxation right for this income to the country in which the permanent establishment is located (see section 6.2.4 above in this respect). Furthermore, other expenses directly connected with the business activities in Germany should be deductible.

To what extent revenues could be allocated to the permanent establishment would to a high degree depend on the specific business activities. If, for example, a permanent establishment is considered because the assigned employee carries out services to the German subsidiary on behalf and to the benefit of the Chinese company, an arm's length service fee would be regarded as revenue of the permanent establishment. If the assigned employee carries out the original business of the Chinese company (e.g. selling goods or providing services to customers) in Germany and by doing so, creates a permanent establishment, revenues which can be allocated to the activities of the assigned employee (by applying the aforementioned two-step procedure) would constitute the permanent establishment's revenues. In practice, it may however be difficult to make a clear distinction.

7. Inspections

7.1. Scope of inspections

Employers established in Germany or abroad who are providing technical services or labor in Germany may be subject to inspections for example with regard to work permits of their employees in Germany and correct deduction of wage income tax and of social insurance contributions. Audits regarding employers' duties around social insurance contributions and notification requirements arising from social insurance regulations in Germany usually take place every four years.

In a nutshell, all of the laws regarding the protection of employees can be subject of inspections. In Germany, there are lots of different supervisory authorities who conduct inspections in the various areas of employment law (for example regarding the maximum of working hours, protection of juveniles, protection of mothers-to-be, minimum wage, etc.).

The Act on Safety and Health at Work also defines the powers of the competent authorities. For example, they may obtain information from the employer or the responsible person and request that the relevant documents are made available. They may also enter, view and inspect business premises during working hours. They may examine working procedures and workflows and identify work-related health hazards. During the inspection, they may also investigate the causes of an industrial accident, work-related illness or damage. The Act on Safety and Health at Work also applies to foreign companies domiciled in Germany.

If an employer is subject to a customs inspection under the Control of Unreported Employment Act (Schwarzarbeitsbekämpfungsgesetz - SchwarzArbG), he is required by law to allow such inspection to be conducted and to cooperate fully. The scope of this obligation to cooperate also includes any of the employees encountered during the inspection. If an employer fails to cooperate during such inspection, he is committing an administrative offence and can be fined.

The provisions of the Minimum Wage Act (MiLoG), of the Posted Workers Act (AEntG) and of the Act on the Provision of Temporary Workers (AÜG) require that even an employer established abroad who falls within the scope of these Acts must keep the following documents, in German language, available on German territory and surrender them to the customs authorities when requested to do so. These documents include employment contracts and/or any other documents that reveal the essential terms of the employment relationship, which may be records such as:

- pay slips,
- evidence of wage payments made,
- evidence of working time.

It may be necessary for the customs authority to request other documents in order to clarify matters; for example, whether the employment relationships of the employees encountered were German or foreign employment relationships (request for the submission of posting certificates). If employers fail to cooperate

during such inspection, that is, if they are in breach of their obligation to provide information, they are committing an administrative offence, and can be fined.

Whoever has been fined a minimum of EUR 2,500 for a violation of the provisions of the MiLoG and/or the AEntG, may be temporarily excluded from taking part in competitive bidding for public supply, construction, or service contracts. Fines of more than EUR 200 under the MiLoG, the AEntG, the AÜG will be noted in the central business register.

7.2 Companies' strategy coping with inspections

In the event of an inspection, irrespective of the responsible authority, the companies should cooperate with the authorities. Otherwise, they would have to deal with administrative offences.

There are a few strategies to coping with an inspection:

- **Conduct self-evaluation and strictly comply with key employment laws and regulations.**
  Companies need not fear any inspection if their conducts are within the laws and regulations of employment laws.
- **Ensure the inspection is conducted by law.**
  Companies shall cooperate with the employment inspections. Companies are entitled to request the inspectors to show their certifications. The inspectors are entitled to enter the companies' premises and collect related materials. However, when a criminal offence is in question, the person concerned does not have to incriminate himself and may refuse to testify.
- **Providing inspection documents.**
  The inspectors are entitled to look into the documents, require the companies to provide other related documents, demand explanations from the company and issue enquiry if necessary. The companies shall provide the necessary documents on the demand of the inspectors, however, if trade secrets are involved in the documents, companies may request for the non-disclosure of the trade secrets by the inspectors.
- **Let the professionals answer to the inspection.**
  The answers of the staff to the inquiry of the inspectors will be the grounds of the inspection decisions. Therefore, when being inquired, the companies could arrange the employees with good knowledge of the company and employment laws and regulations. The inquired persons shall have a comprehensive view of the issues under the inspection and avoid self-contradiction.

Useful Links

(CN: Chinese language / DE: German language / EN: English language)

Laws and legal regulations	
Basic Law for the Federal Republic of Germany (Constitution – Grundgesetz)	• www.gesetze-im-internet.de/gg/index.html (DE) • www.gesetze-im-internet.de/englisch_gg/index.html (EN)
Caregiver Leave Act (Pflegezeitgesetz)	www.gesetze-im-internet.de/pflegezg/ (DE)
Civil Code (Bürgerliches Gesetzbuch)	• www.gesetze-im-internet.de/bgb/ (DE) • www.gesetze-im-internet.de/englisch_bgb/index.html (EN)
Act for the Improvement of Company Pension Plans (Betriebsrentengesetz)	www.gesetze-im-internet.de/betravg/ (DE)
Continuation of Remuneration Act (Entgeltfortzahlungsgesetz)	www.gesetze-im-internet.de/entgfg/ (DE)
Copyright Act (Urhebergesetz)	• www.gesetze-im-internet.de/urhg/ (DE) • www.gesetze-im-internet.de/englisch_urhg/index.html (EN)
Design Act (Designgesetz)	• www.gesetze-im-internet.de/geschmmg_2004/ (DE) • www.gesetze-im-internet.de/englisch_geschmmg/index.html (EN)
Double Tax Treaty China-Germany	• www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/Laender_A_Z/China/2015-12-29-China-Abkommen-DBA-Gesetz-chinesische-Sprachfassung.pdf?__blob=publicationFile&v=4 (CN) • www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/Laender_A_Z/China/2015-12-29-China-Abkommen-DBA-Gesetz.pdf?__blob=publicationFile&v=3 (DE)
Employee Inventions Act (Arbeitnehmererfindungen-Gesetz)	www.gesetze-im-internet.de/arbnerfg/ (DE)
Employment Ordinance (Beschäftigungsverordnung)	• www.gesetze-im-internet.de/beschv_2013/ (DE) • www.gesetze-im-internet.de/englisch_beschv/index.html (EN)
European Directive 2014/66/EU (ICT Directive)	eur-lex.europa.eu/legal-content/EN/TXT/?qid=1505736974535&uri=CELEX:32014L0066 (EN)
European Directive 2016/801/EU	eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2016_132_R_0002 (EN)

European Regulation (EC) No 593/2008 (Rome I-Regulation)	eur-lex.europa.eu/eli/reg/2008/593/2008-07-24 (EN)
Foreign Tax Act (Außensteuergesetz)	www.gesetze-im-internet.de/astg/ (DE)
Hours of Employment Act (Arbeitszeitgesetz)	www.gesetze-im-internet.de/arbzg/ (DE)
Labor Court Act (Arbeitsgerichtsgesetz)	www.gesetze-im-internet.de/arbgg/ (DE)
Act on Limited Employment Contracts in the Scientific Sector (Wissenschaftszeitvertragsgesetz)	www.gesetze-im-internet.de/wisszeitvg/ (DE)
Maternity Protection Act (Mutterschutzgesetz)	www.gesetze-im-internet.de/muschg_2018/ (DE)
Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists (Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit / Arbeitssicherheitsgesetz)	• www.gesetze-im-internet.de/asig/ (DE) • www.gesetze-im-internet.de/englisch_asig/index.html (EN)
Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (Act on Safety and Health at Work - Arbeitsschutzgesetz)	• www.gesetze-im-internet.de/arbschg/ (DE) • www.gesetze-im-internet.de/englisch_arbschg (EN)
Federal Parental Benefit and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz)	www.gesetze-im-internet.de/beeg/ (DE)
Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz)	www.gesetze-im-internet.de/tzbfg/ (DE)
Patent Act (Patentgesetz)	• www.gesetze-im-internet.de/patg/ (DE) • www.gesetze-im-internet.de/englisch_patg/index.html (EN)
Posted Workers Act (Arbeitnehmer-Entsendegesetz)	• www.gesetze-im-internet.de/a-entg_2009/ (DE) • www.gesetze-im-internet.de/englisch_aentg/englisch_aentg.html (EN)
Decree on the Attribution of Profits to Permanent Establishments (Betriebsstättengewinnaufteilungs-verordnung or BsGaV)	www.gesetze-im-internet.de/bsgav/ (DE)
Law of Proof of Substantial Conditions for an Employment Relationship (Nachweisgesetz)	www.gesetze-im-internet.de/nachwg/BJNR094610995.html (DE)
Minimum Wage Act (Mindestlohngesetz)	• www.gesetze-im-internet.de/milog/ (DE) • www.gesetze-im-internet.de/englisch_milog/index.html (EN)
Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz)	www.gesetze-im-internet.de/kschg/ (DE)
Residence Act (Aufenthaltsgesetz)	• www.gesetze-im-internet.de/aufenthg_2004/index.html (DE) • www.gesetze-im-internet.de/englisch_aufenthg/index.html (EN)
Residence Ordinance (Aufenthaltsverordnung)	www.gesetze-im-internet.de/aufenthv/ (DE)
Federal Ministry of Interior (Bundesministerium des Innern): General Administrative Regulations on the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz)	www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)

Federal Ministry of Interior: Implementing Instructions on the Skilled Immigration Act (Anwendungshinweise zum Fachkräfteeinwanderungsgesetz)	www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/anwendungshinweise-fachkraefteeinwanderungsgesetz.html (DE)
Federal Employment Agency (Bundesagentur für Arbeit): Administrative Instructions of this Agency on the Residence Act and the Employment Ordinance (Fachliche Weisungen zum Aufenthaltsgesetz)	www.arbeitsagentur.de/datei/dok_ba146473.pdf (DE)
SARS-CoV-2 Occupational Health and Safety Ordinance (SARS-CoV-2-Arbeitsschutzverordnung)	www.gesetze-im-internet.de/corona-arbschv/BJNR602200021.html
Social Security Code II (Sozialgesetzbuch II)	www.gesetze-im-internet.de/sgb_2/ (DE)
Social Security Code III (Sozialgesetzbuch III)	www.gesetze-im-internet.de/sgb_3/ (DE)
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Social Security Code VI (Sozialgesetzbuch VI)	www.gesetze-im-internet.de/sgb_6/ (DE)
Social Security Code VII (Sozialgesetzbuch VII)	www.gesetze-im-internet.de/sgb_7/ (DE)
Social Security Code IX (Sozialgesetzbuch IX)	www.gesetze-im-internet.de/sgb_9_2018/ (DE)
Social Security Code XI (Sozialgesetzbuch XI)	www.gesetze-im-internet.de/sgb_11/ (DE)
Law on Temporary Work (Arbeitnehmerüberlassungsgesetz)	www.gesetze-im-internet.de/a_g/index.html (DE)
Act on Transparency of Pay (Entgelttransparenzgesetz)	www.gesetze-im-internet.de/entgtranspg/ (DE) www.gesetze-im-internet.de/englisch_entgtranspg/index.html (EN)
Works Constitution Act (Betriebsverfassungsgesetz)	www.gesetze-im-internet.de/betrvg/ (DE) www.gesetze-im-internet.de/englisch_betrvg/index.html (EN)
Young Persons' Protection in Employment Act (Jugendarbeitsschutzgesetz)	www.gesetze-im-internet.de/jarbschg/ (DE)
Control of Unreported Employment Act (Schwarzarbeitsbekämpfungsgesetz)	• www.gesetze-im-internet.de/schwarzarbg_2004/ (DE) • www.gesetze-im-internet.de/englisch_schwarzarbg/index.html (EN)
Institutions mentioned in the publication	
Central Office for Foreign Education (Zentralstelle für ausländisches Bildungswesen – ZAB): information on statement of comparability	www.kmk.org/zab/central-office-for-foreign-education/statement-of-comparability-for-foreign-higher-education-qualifications.html (EN)
Central Office for Foreign Education: Anabin database	www.anabin.de (DE)

Central Office for Foreign Education: guidance on the application process in connection with an EU Blue Card	www.kmk.org/zab/central-office-for-foreign-education/statement-of-comparability-for-foreign-higher-education-qualifications/eu-blue-card.html (EN)
Central Office for Foreign Education: information on required documentation for processes in connection with an EU Blue Card	www.kmk.org/zab/zentralstelle-fuer-auslaendisches-bildungswesen/zeugnisbewertung-fuer-auslaendische-hochschulqualifikationen/einzureichende-dokumente/china/china-chinesisch.html (CN)
Federal Ministry of Interior: Covid-19 travel restrictions and border controls	www.bmi.bund.de/SharedDocs/faqs/EN/topics/civil-protection/coronavirus/travel-restrictions-border-control/travel-restriction-border-control-list.html (EN)
Federal Employment Agency (Bundesagentur für Arbeit)	www.arbeitsagentur.de/en/welcome (EN)
Federal Labor Court (Bundesarbeitsgericht)	www.bundesarbeitsgericht.de (DE)
Federal Office for Migration and Refugees	www.bamf.de/EN/Startseite/startseite-node.html (EN)
Germany Liaison Agency Health Insurance – International	www.dvka.de (DE)
German missions in China	china.diplo.de/cn-zh (CN)
German missions in China: information on national visa	china.diplo.de/cn-zh/service/visa-einreise/nationales-visum/1345434 (CN)
German missions in China: Covid-19 travel restrictions and border controls	china.diplo.de/cn-zh/service/visa-einreise (CN)
ISCO 08 (International Standard Classification of Occupations) of the International Labour Office	www.ilo.org/public/english/bureau/stat/isco/docs/publication08.pdf (EN)
Make it in Germany – the German Federal Government's official information portal for qualified professionals	www.make-it-in-germany.com/en/ (EN)
National Association of Statutory Health Insurance Funds (GKV-Spitzenverband): list of public health insurance providers and additional contribution rates	www.gkv-spitzenverband.de/service/krankenkassenliste/krankenkassen.jsp (DE)
Recognition in Germany – web portal	www.recognition-in-germany.de (EN)
VFS Global	www.vfsglobal.cn/Germany/China/English/index.html (EN)
VFS Global: information on Schengen visa	www.vfsglobal.cn/Germany/China/English/Short-Stay-Visa.html (EN)

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Publisher
Germany Trade and Invest –
Gesellschaft für Außenwirtschaft
und Standortmarketing mbH
Friedrichstraße 60
10117 Berlin
Germany

T +49 30 200 099-555
F +49 30 200 099-999
invest@gtai.com
www.gtai.com

Executive Board
Dr. Jürgen Friedrich, Chairman/CEO
Dr. Robert Hermann, CEO

Editor
Michael Florian Ranft, Taylor Wessing

Contact
Christina Schön & Udo Sellhast,
Germany Trade & Invest
christina.schoen@gtai.com
udo.sellhast@gtai.com

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Germany Trade & Invest

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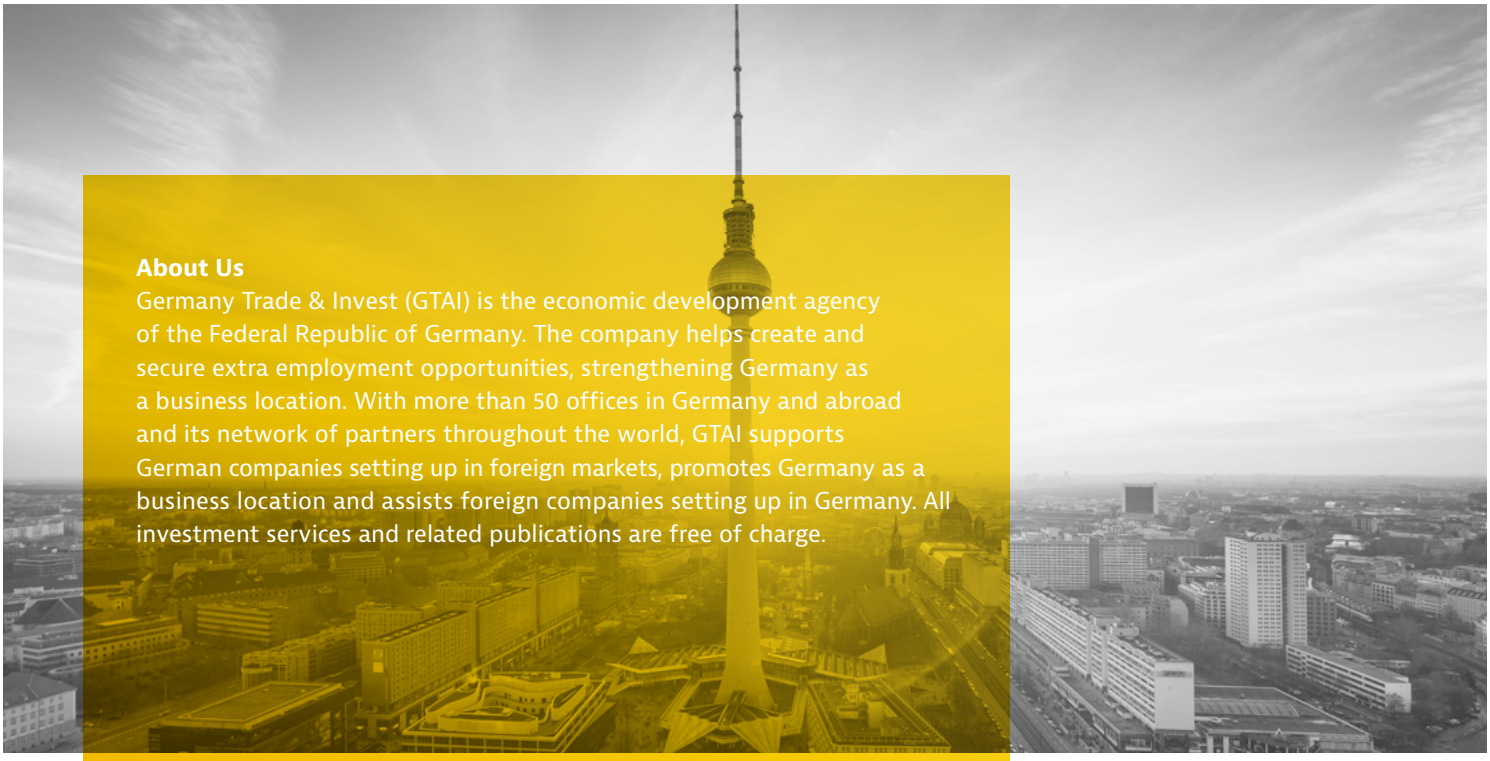

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Germany Trade & Invest
Headquarters
Friedrichstraße 60
10117 Berlin
Germany
T +49 30 200 099-0
F +49 30 200 099-111
invest@gtai.com
www.gtai.com

Germany Trade & Invest
Bonn Office
Villemombler Straße 76
53123 Bonn
Germany
T +49 228 249 93-0
F +49 228 249 93-212
info@gtai.de
www.gtai.de