



# RECRUITING IN GERMANY

Getting it right first time.



## Section 1

### Know what to expect 9

#### 1.1 Demographics 10

- State comparison 10

#### 1.2 Education, Age and Qualification / The "older German Candidate" 12

- University 13
- Germany's top ranked Universities 13
- University of Applied Science (UAS) 14
- Germany's top ranked UAS 14
- Berufsakademie (BA) (literally career academy) 14
- Verwaltungs- und Wirtschaftsakademie (VWA) (literally academy of administration and economics) 15
- Remote Learning 15
- Industrie- und Handelskammer (IHK) (Chamber of Industry and Commerce) 15

#### 1.3 Salaries 15

- Average Starting Salary 15
- General Trends 16
- Variable Salary 16

#### 1.4 Notice Periods 17

## Section 2

### First step to successful Recruiting – Job specification 19

#### 2.1 Education 20

#### 2.2 Language Skills 20

#### 2.3 Key Account Contacts 20

#### 2.4 Specific Product Knowledge 20

#### 2.5 Home office versus local presence 21

#### 2.6 Leadership experience 21

#### 2.7 Seniority 21

#### 2.8 Salary 21

#### 2.9 Summary 21

#### 2.10 Sample Job Specification 22

## **Section 3**

### **Choosing the Recruiting Method 25**

**3.1 Networking 26**

**3.2 Going it alone – Advertised Selection / Own Label 28**

**3.3 Advertised selection / Consultants Label 29**

**3.4 Executive Search / Direct Approach 30**

**3.5 Students / Interns / Temporary Employees 32**

## **Section 4**

### **Getting the Most from the Interview 33**

## **Section 5**

### **Cross Checking and Referencing 36**

**5.1 Arbeitszeugnis (letter of reference) 36**

**5.1 Referencing 36**

## **Section 6**

### **Boarding 37**

## **Section 7**

### **Recruiting Do's and Don'ts 41**

## **Section 8**

### **A Guide to German Employment Law by CMS Hasche Sigle 43**

## Executive Summary

Traditionally business / economic relations between Germany and Ireland have always been strong. Germany is the second biggest source of foreign direct investment into Ireland and also Ireland's 4th largest export market.

As the Irish economy strives to sustain growth, upscaling exports and international competitiveness is more crucial than ever. Germany is a lucrative and prestigious market for Irish companies to tackle and master and poses strong challenges in terms of complexity, diversity and competition despite the traditionally strong foundation.

One of the most crucial factors for success for Irish companies in Germany will be hiring the right people on the ground from the onset which means that the often vastly underestimated recruiting / hiring process may determine success or failure, even of these companies with the right product at the right time.

Getting it right first time is crucial for any hire. For a fledgling Irish business where the growth potential in Germany can rest on the shoulders of the first "man on board" the cost of a mistake could be immeasurable.

As with every market Germany has its own challenges / rules of thumb. Recruiting outside of the domestic "comfort zone" is a challenge for any company and the following pointers dealt with in some depth in this paper, should give a sound framework for the issues to consider.

### Status 2008

Even for established companies the "war for talent" has gained unbelievable momentum since the upturn in the German economy. A structured, focussed and well managed recruiting process is the only way to be perceived as an employer of choice for the right calibre of person.

### Know what to expect

#### Demographics

The German market is vast, decentralised and culturally diverse. Different states have different laws, school systems and other idiosyncracies creating mobility and location issues. There is no "Dublin" in Germany.

#### Age versus experience

The German education system produces different 'end products' than the Irish system. Education standards / types vary, as does duration of study.

This has an impact on a candidate's age and experience level which can vary greatly from comparable Irish candidates.

#### Salaries

Recruiting in Germany may mean paying a higher salary than would be the case in Ireland for the same role. There is a fine line between upsetting pay policy and ensuring attraction of the right calibre.

#### Notice Period

Notice periods tend to be longer in Germany. An average wait of 3 months between contract signing and start date must be calculated.

#### First step to successful recruiting

Get the profile right. Sorting the "must haves" from the "nice to haves" at the onset is crucial.

### Recruiting Method

Finding the right candidate in a market the size of Germany may appear daunting – and it is! A structured approach to recruiting is an investment and ideally shouldn't be left to chance – getting it wrong costs money. Issues like timing, deadlines, binding internal resources as opposed to fee should ultimately determine the recruiting strategy.

### Cross Checking and Referencing

Fraud is not a huge issue in the German recruiting market, not in the least due to the thorough documentation system of the "Zeugnis" (roughly letter of reference) issued for every employee at the end of each term of employment.

3rd party referencing is also not uncommon but governed by a strict code of ethics.

### Boarding

There is no guaranteed recipe for success in the end phase of the hiring process but a sensible negotiating / offer process can ensure that the desired candidate will make the move.

## Getting it right first time

More often than not the cost of the recruiting / hiring process is perceived to be a necessary evil and an expense which should be held to a minimum come what may. The cost of recruiting agencies, advertising Executive Search can amount to 1/3 of first year's salary which at face value is a lot of money.

However, making a mistake in any hiring process can cost a lot more money than is immediately obvious.

**It is vital to consider not the “cost of a hire” but the “potential cost of a bad hire”.**

Oftentimes it can take up to 6 – 12 months to ultimately determine if any employee is a good hire. At this point the wrong decision may have incurred costs up to 3.5 times annual salary. Some of these include:

### Initial Process Costs

- » recruiting expenses
- » interviewing expenses
- » relocation costs (where applicable)
- » time to boarding
- » integration
- » management training
- » salary paid

### Replacement Costs

- » new recruiting process expenses
- » additional time to boarding of replacement
- » bridging costs (interim management)

### Severance Costs

- » following 6 month average probation period giving notice to an employee may cost a lot of money in Germany

What is immeasurable, particularly in the case of a first market hire is the lost revenue, missed opportunities and potential for damage to the company's image.

An early stage business in a competitive market may do irreparable damage by selecting the wrong candidate.

For Irish companies recruiting in alien territory, the potential to make a mistake is much greater than on home ground.



**Recruitment is a vital issue for any company going for growth in Germany and should be given the attention, thought, planning and investment it needs to generate long term added value for the business. Taking it too lightly can be a fatal mistake.**

Setting aside the pure cost issues, good first hires play an important long term role in growing the company in terms of quality headcount. The first person on the ground is not only the “business card” for clients but will also set the standard for how the company is perceived as an employer of choice locally. Regardless of the quality and culture of the Irish headquarters the local presence will be measured by employees on board there

.....

**Good people follow good people.**

.....

A strong first hire with a quality track record will impress those who follow as the organisation grows and act as a magnet for other strong players.

Even if the organisation remains small in terms of headcount, leadership and management skills will generate their own added value and bring positive impulse into the overall (international) business. A strong partner in a high potential market like Germany will be a bench mark for other geographies as well as a valuable source of knowledge and input for developing a broader pan-European strategy.

## Recruiting in Germany 2008 / Market Status

The year 2000 was the “boom” year for recruiting in Germany with an estimated €1.27 billion generated in the search and selection of managers and specialists. The all time “low” was 2003 where the market had shrunk by almost 45 %. Since 2003 the market has been growing steadily (by almost 20 % between 2005 and 2006) to reach a volume of €1.15 billion.

Further growth of 15 % is expected in 2008 according to the BDU – Bundesverband Deutscher Unternehmensberater (Industry Association).

**In 2008 it is expected that the search and selection market for managers and specialists will be at a record high.**

The implications for any company recruiting in Germany are clear. With around one third of all positions being filled in sales / marketing, making good first hires primarily in these functions will pose a real challenge for young Irish businesses.

- » With the amount of recruiting going on in the market, competition will be fierce for companies of all origins and sizes as well as across segments and functions. Engineers will be in big demand as it estimated that there are more than 20,000 too few in the market according to VDI – the industry association of engineers. German companies have begun to recruit abroad, particularly in light of the fact that the number of registered engineering students has dropped from 49,000 to 39,000 the past 10 years.
- » The demand for candidates will lead to a scarcity of “readily available” talent and reduce the volume of job seekers in the market. “Short cutting” will not yield the same potential as in the years 2003 – 2005.
- » More targeted and sophisticated recruiting processes will be necessary to identify and attract the calibre of candidate required / desired.
- » In 2006 more than 53 % of all contracted recruiting assignments were direct search processes and more than 80 % were complemented by direct search. Only 5.8 % of the market volume was generated by single process online selection and less than 10 % by print advertisement selection.
- » Choosing the right recruiting partner will be crucial. They must have the know-how, resources, image and credibility to get high calibre candidates to the table and be in a position to advise and support a market entry client in every step of the process. Experience, specialisation, standing and style of consultant must be in line with market expectations.
- » Hiring companies will not only need to be convincing but decisive and fast. If you don’t hire, the competition will.
- » Hiring companies must offer competitive salary packages. For Irish players this may mean defining alternative grading for positions in Germany where salaries are generally higher than in Ireland.
- » Good candidates are in a strong position and need to be treated like customers. Strong communication / anticipating needs will be vital in generating and maintaining competitive advantage.
- » Hiring companies must be able to communicate long term vision and prospects for the company and for the individual.
- » Candidates are in a position to pick and choose and may not always take the “moral high road”. Signed contracts can be rebuked and it is recommended to keep up active communication and involvement with the future incumbent between contract signing and start date.

**In summary Irish businesses setting up a sales presence in Germany over the next two years will be challenged by a buoyant recruiting market and must approach the hiring and recruiting process seriously and perhaps very differently to Ireland and / or other markets.**

# Section 1 – Know what to expect

<b>1.0 Know what to expect</b>	<b>10</b>
<hr/>	
<b>1.1 Demographics</b>	<b>10</b>
State comparison	10
<hr/>	
<b>1.2 Education, Age and Qualification / The “older German Candidate”</b>	<b>12</b>
University	13
Germany’s top ranked Universities	13
University of Applied Science (UAS)	14
Germany’s top ranked UAS	14
Berufsakademie (BA) (literally career academy)	14
Verwaltungs- und Wirtschaftsakademie (VWA) (literally academy of administration and economics)	15
Remote Learning	15
Industrie- und Handelskammer (IHK) (Chamber of Industry and Commerce)	15
<hr/>	
<b>1.3 Salaries</b>	<b>15</b>
Average Starting Salary	15
General Trends	16
Variable Salary	16
<hr/>	
<b>1.4 Notice Periods</b>	<b>17</b>
<hr/>	

## 1.0 Know what to expect

Without knowing what the market has to offer it is next to impossible to define a job specification which makes sense and is in line with what the business needs versus what the market can yield.

Evaluating and benchmarking candidates coming out of a different "system" is a challenge in itself and thus it is important to understand the main ways in which German candidates may differ from their Irish peers in terms of education, age, culture, background and expectations.

### 1.1 Demographics

Germany is a decentralised and heterogeneous market. There is no one major business centre but rather a conglomeration of industry sectors around various urban centers and regions.

In terms of population the largest cities are

<b>Berlin</b>	3.4 million
<b>Hamburg</b>	1.8 million
<b>Munich</b>	1.8 million
<b>Cologne</b>	990,000
<b>Frankfurt</b>	660,000
<b>Düsseldorf</b>	580,000

However, there are a total of 14 cities with more than 500,000 population and 80 with more than 100,000.

The 16 states can also vary strongly in terms of culture, school systems, infrastructure, labour and the legal system making mobility / relocation across states unattractive (e. g. a secondary level teacher

is only automatically certified to teach in the state where the teaching degree was conferred. Thus, relocating families where one spouse is a teacher can be next to impossible).

- » As a rule of thumb it can be said that it remains difficult to relocate candidates from Western to Eastern German states.
- » There is a higher abundance of unskilled labour in the East and more unemployment.
- » Salaries tend to be lower than in the West (general standard of living including cost of real estate lower). The highest starting salaries in Germany are in Hessen (Frankfurt) followed by Bayern (Munich), Baden-Württemberg (Stuttgart) and the Rhein-/Ruhr-Region (Düsseldorf).
- » In terms of rental property the West German urban centers also lead the market:

#### Most expensive cities by rent

- » Munich (50 % higher than national average)
- » Düsseldorf
- » Stuttgart
- » Cologne
- » Wiesbaden

The high rental prices in these cities are determined less by demand than purchasing power and apply not only to the cities directly but to regional belts e.g. Frankfurt – Wiesbaden – Darmstadt – Stuttgart and surroundings, Rhein/Ruhr axis Cologne – Düsseldorf, region around Hamburg.

### State comparison (E = former Eastern States)

State	Main City	Main Industries
<b>Baden-Württemberg</b>	Stuttgart	<ul style="list-style-type: none"> <li>» Innovation</li> <li>» R &amp; D</li> <li>» IT and communications technology</li> <li>» Bio technology</li> <li>» Environmental technology</li> <li>» Also traditional industries automobile, plant and equipment</li> </ul>

## State comparison (E = former Eastern States)

State	Main City	Main Industries
<b>Bavaria</b>	Munich	<ul style="list-style-type: none"> <li>» High tech Service</li> <li>» No. 2 Banking location</li> <li>» No. 1 Insurance location</li> <li>» Pharmaceuticals</li> <li>» High concentration of foreign (US) companies</li> </ul>
<b>Berlin</b>	Berlin	<ul style="list-style-type: none"> <li>» Headquarter of many economic organisations</li> <li>» Young and innovative companies</li> <li>» Advertising / media / IT / Communication</li> <li>» Biotech</li> <li>» Med-Tech</li> </ul>
<b>Brandenburg (E)</b>	Potsdam	<ul style="list-style-type: none"> <li>» Food and beverages</li> <li>» Scientific institutions</li> <li>» Chemicals</li> <li>» Energy</li> <li>» Vehicle manufacturing</li> <li>» Door to Eastern Europe</li> </ul>
<b>Bremen</b>	Bremen	<ul style="list-style-type: none"> <li>» Aerospace / Aviation (transformation from shipbuilding capital)</li> <li>» Food and Beverages</li> </ul>
<b>Hamburg</b>	Hamburg	<ul style="list-style-type: none"> <li>» Traditionally foreign trade</li> <li>» New media capital</li> <li>» Consumer goods</li> <li>» Marine industry</li> </ul>
<b>Hessen</b>	Wiesbaden	<ul style="list-style-type: none"> <li>» Largest city Frankfurt is banking and financial services capital</li> <li>» Largest consumer trade fairs</li> <li>» International investors (ITT, GM, P+G, Motorola, Honeywell)</li> <li>» ¼ of all foreign direct investors in region</li> </ul>
<b>Mecklenburg-Vorpommern (E)</b>	Schwerin	<ul style="list-style-type: none"> <li>» Transport and logistics</li> <li>» Marine Industry</li> <li>» High investment in new telecommunication infrastructures</li> </ul>
<b>Niedersachsen</b>	Hannover	<ul style="list-style-type: none"> <li>» Internet</li> <li>» Biotechnology</li> <li>» High-tech (strong state government promotion between industry and education)</li> </ul>
<b>Nord-Rhein-Westfalia</b>	Düsseldorf	<ul style="list-style-type: none"> <li>» Excellent infrastructure (2 international airports)</li> <li>» 1/3 of all foreign direct investors</li> <li>» Telecommunications</li> <li>» High-tech</li> <li>» Services</li> <li>» Trade Fair capital</li> </ul>

## State comparison (E = former Eastern States)

State	Main City	Main Industries
Rheinland-Pfalz	Mainz	<ul style="list-style-type: none"> <li>» Chemicals</li> <li>» Pharmaceuticals</li> <li>» Vehicle manufacturing</li> <li>» High-tech (research)</li> </ul>
Saarland	Saarbrücken	<ul style="list-style-type: none"> <li>» Technology and innovation – driven young companies (political environment driving “innovation”)</li> <li>» Strong France / Luxembourg ties</li> </ul>
Sachsen (E)	Dresden	<ul style="list-style-type: none"> <li>» Machine construction</li> <li>» Automobile</li> <li>» Microelectronics</li> </ul>
Sachsen-Anhalt (E)	Magdeburg	<ul style="list-style-type: none"> <li>» Politically friendly to foreign investors (largest volume across East German states)</li> <li>» Chemicals</li> <li>» Machine construction</li> <li>» Automobile suppliers</li> <li>» Bio- and Med-tech high potential in region</li> </ul>
Schleswig-Holstein	Kiel	<ul style="list-style-type: none"> <li>» High-tech and services</li> </ul>
Thüringen (E)	Erfurt	<ul style="list-style-type: none"> <li>» Attractive location for large-scale production (Lufthansa Technik, Rolls-Royce, Bertrandt)</li> </ul>

### 1.2 Education, Age and Qualification / The “older German Candidate”

The second and third level education system in Germany is complex and can vary from state to state. There is no single standard leaving certificate although “Abitur” is the equivalent qualification to gain entry to 3rd level education and the only way to get a place at a fully fledged university.

There are “back doors” to qualification for third level education at the more practice-oriented “Fachhochschule” (university of applied sciences) which can be gained in steps.

In general, children start school later (at least six years old), males still have 9 months obligatory military service (or alternative). It is not uncommon for Abitur graduates to do a two year apprenticeship before going to university and a full university degree takes an average of 10 semesters (and sometimes much longer).

**It is therefore not uncommon that a male graduate may be in his late twenties when entering the workforce.**

**Females tend to be in their mid twenties.**

This is important to remember when defining age and experience levels required for a position in particular when benchmarking against Ireland.

There are currently over 100 universities and 175 universities of applied sciences in Germany from which graduates receive a degree e.g.

**Diplom-Ingenieur = Engineering Degree from (Dipl.-Ing.) (technical) university**

**Diplom-Ingenieur = Engineering Degree from (Dipl.-Ing. FH) UAS**

Over the past few years additional third level qualifications with a stronger “learning on the job” element have become somewhat more commonplace and accepted although the “status” of a university degree remains strongest.

Potential candidates with third level qualification will typically have gone through one of the following.

### University

High image academic degree whereby candidates may command a higher starting salary than those with alternative qualifications e.g. starting salaries for engineers.

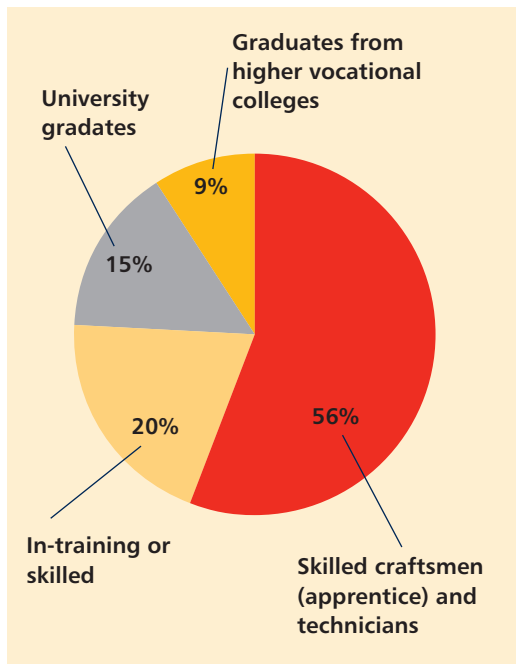
University	UAS
€35.000 - €43.000	€33.000 - €41.000

Most German universities are public state owned, currently complemented by 12 private universities which have a limited number of places and demand a top "Abitur" and guarantee an above average student / lecturer ratio. These graduates generally enjoy high demand in the market but less than 1 % of graduates come from the private segment.

A university degree is a prequalification for PhD.

Most universities have begun to offer "Bachelor" degree courses in alignment with European harmonisation but it is still quite uncommon.

### Workforce in Germany by level of Education (does not include unemployed)



### Germany's top ranked Universities

#### Economics

- » European Business School, Oestrich-Winkel (private university)
- » WHU Otto Beisheim School of Management, Vallendar (private university)
- » University of Bayreuth
- » University of Münster
- » University of Cologne
- » University of Frankfurt/Oder (Viadrina)
- » HH Leipzig (private university)
- » Technical University Munich
- » Ludwig-Maximilian-university, Munich

#### IT

- » Technical University Karlsruhe
- » Technical University Munich
- » Technical University Darmstadt
- » Freie Universität Berlin
- » University of Potsdam

#### Law

- » Albert-Ludwigs-University Freiburg
- » University of Passau
- » University of Konstanz
- » University of Osnabrück
- » Julius-Maximilian-University Würzburg
- » University of Heidelberg

#### Engineering / Industrial Engineering / Process Technology

- » Rheinisch-Westfälische Technische Hochschule (RWTH) Aachen
- » Technical University Karlsruhe
- » Technical University Darmstadt
- » Technical University Braunschweig
- » Technical University Munich
- » University of Mannheim

#### Commercial Information Technology

- » Technical University Karlsruhe
- » Westfälische Wilhelms-University Münster
- » University of Paderborn
- » University of Osnabrück

### Private Universities in Germany

- » Bucerius Law School Hamburg
- » European Business School (EBS) Oestrich-Winkel
- » ESCP-EAP Europäische Wirtschaftshochschule Berlin
- » Frankfurt School of Finance & Management
- » Gustav-Siewerth-Akademie Weilheim-Beierbronn
- » Handelshochschule Leipzig (HHL)
- » International University of Germany Bruchsal
- » Jacobs University Bremen (JUB)
- » Steinbeis Hochschule Berlin
- » Universität Witten/Herdecke
- » WHU Otto Beisheim School of Management Vallendar
- » Wissenschaftliche Hochschule Lahr
- » Zeppelin University Friedrichshafen

### University of Applied Science (UAS) / Fachhochschule

Generally a more practice oriented degree taking at least 8 semesters. Obligatory internships / work experience are part of the curriculum – the number of which may vary from state to state.

Many UAS offer international degree courses in the meantime in cooperation with partners in other countries, most graduates of which will speak one other foreign language in addition to English.

The “FH” degree is not an automatic qualification for PhD (few exceptions).

Graduates must declare the status UAS.

Business Graduate	= Diplom-Betriebswirt (FH).
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### Germany's top ranked UAS

#### Economics

- » HS Albstadt / Sigmaringen
- » FH Amberg
- » FH Ansbach
- » FH Bergisch-Gladbach (private)
- » FH Bonn
- » FH Deggendorf
- » Nordakademie Elmshorn (private)
- » FH Ingolstadt

- » RFH Cologne (private)
- » FH Neu-Ulm
- » FH Nürnberg
- » HS Reutlingen
- » FH Stralsund

#### Information Technology

- » HS Bremen
- » HS Darmstadt
- » FH Dortmund
- » HAW Hamburg
- » HAWK Hildesheim / Göttingen
- » FH Ingolstadt
- » HDM Stuttgart
- » FH Wedel

#### Engineering / Industrial Engineering / Process Technology

- » FH Amberg
- » FH Braunschweig / Wolfenbüttel
- » FH Deggendorf
- » HS Esslingen
- » FH Gelsenkirchen
- » FH Ingolstadt
- » HS Pforzheim

#### Commercial Information Technology

- » FH Bergisch-Gladbach (private)
- » Nordakademie Elmshorn (private)
- » HS Karlsruhe
- » FH Wedel (private)

### Berufsakademie (BA) (literally career academy)

Students of the BA do a three year combined course of study and work experience and have a working contract with a partner company. Practice and theory rotate in three month blocks (dual system) and courses are offered with technical, business and social science focus. The BA course graduates have a high level of work experience at a younger age but the diploma “BA” is not a state recognised academic degree. Graduates must declare BA status.

Business Graduate	= Betriebswirt (BA).
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## Verwaltungs- und Wirtschaftsakademie (VWA) (literally academy of administration and economics)

These are independent institutes offering further education for skilled / trained students and managers. Prerequisite is at least a 3 year apprenticeship or equivalent and more than one year work experience. The graduate must declare the "VWA" qualification and it is not a state recognised academic degree.

Business Graduate	= Betriebswirt (VWA).
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## Remote Learning

There is only one fully fledged remote university (Fern-Universität Hagen) in Germany offering remote degree courses in the main part to mature and working students. Several UASs offer the same opportunity and the two best known remote learning academies are SGD and ILS (not full academic degree).

## Industrie- und Handelskammer (IHK) (Chamber of Industry and Commerce)

The IHK offers further education in some technical and business areas for students with at least 2 years experience as well as apprenticeship. It is not a state recognised degree but roughly diploma equivalent, e.g. Business Diploma -- Staatlich geprüfter Betriebswirt.

The "Meister" diploma is the highest craftsman qualification (IHK).

## 1.3 Salaries

In general salaries tend to be higher in Germany than in Ireland and are expected to rise by an average of 2.7 % in 2008 (in Ireland by 4.7 %). A comparison of typical starting salaries across functions will give a rough indication of how the two markets compare.

### Starting Salary

#### Average Starting Salary 3rd Level Graduates

	Ireland	Germany*
<b>Engineers</b>	€25.000	€37.000
<b>Industrial Engineers</b>	€28.000	€39.000
<b>Business</b>	€28.000	€36.000
<b>IT</b>	€27.000	€37.000

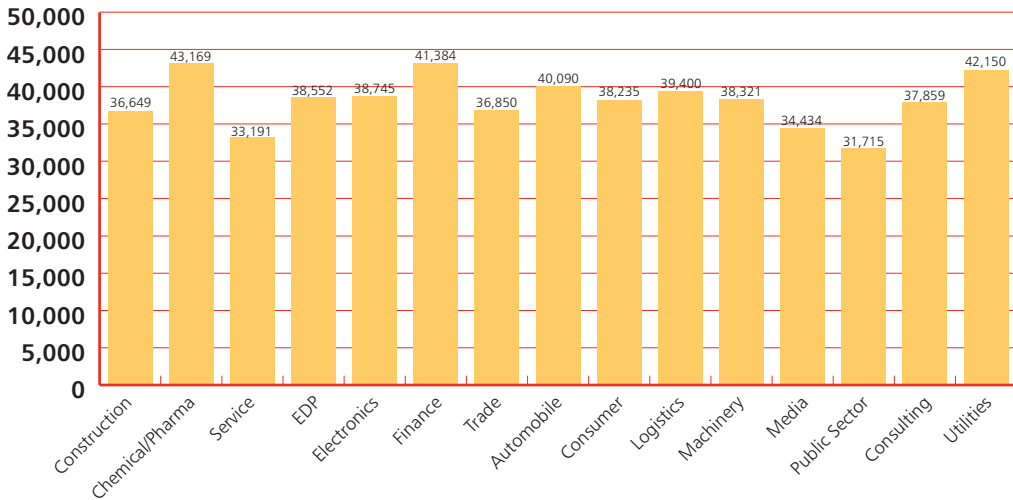
\* These are average values. Top companies can pay up to 30 % more for young talent.

Taking annual increases of 3 % – 5 % into consideration and / or a jump of 10 % – 15 % if the incumbent changes company a rough calculation of salary expectations at specific experience levels can be calculated.

A lot does depend however on the following factors so that an exact prediction is difficult.

<b>Size of company</b>	» Big pay better (up to 25 %)
<b>Location</b>	» West pays better than East, » City better than country » South better than North (e.g. Hessen, Bavaria, Baden-Württemberg)
<b>Degree / qualification</b>	» University graduates and those with further qualifications PhD, MBA earn more
<b>Function</b>	» Cross functional comparison (Average starting salaries €40.000) • R&D • IT • Manufacturing • Sales (Average starting salaries €40.000) • Finance • HR • Controlling (- 3%) • Marketing (- 5 %)
<b>Industry</b>	» These segments pay more than others (average starting salaries €43.000) • Chemicals / Pharmaceuticals • IT • Financial Services • High-tech • Energy • Electronics

## Starting Salaries per industry sector



### General Trends

Starting salaries for academics (3rd level education) remain high. In particular salaries for engineers will be pushed up by the scarcity of talent in the market (VDI – Industry Association calculates that there are roughly 20,000 too few engineers in the market).

### Variable Salary

It is becoming ever more common to offer performance-based variable components on base salary. Around 75% of all graduates starting in business (in particular sales) functions have bonus systems which may depend on

- » Reaching personal targets (turnover)
- » Overall company performance
- » Soft skill development

In general, good candidates are happy to accept a performance-related element in pay but it should be

- » Ideally in the ratio 70 % fixed : 30 % variable (maximum) depending on function
- » Clearly documented / measurable
- » Reachable

### Other Fringe Benefits

#### Company Car

Status symbol in Germany and standard in almost all sales related functions.

<b>Preferred Models</b>	<ul style="list-style-type: none"> <li>» Audi</li> <li>» VW</li> <li>» BMW</li> <li>» Mercedes</li> </ul>
<b>Occasionally</b>	<ul style="list-style-type: none"> <li>» Ford</li> </ul>
<b>Seldom</b>	<ul style="list-style-type: none"> <li>» Volvo</li> <li>» Other non-German brands</li> </ul>

Offering a higher model / better accessories and extras can often be a more convincing argument to “win over” a final candidate than incremental increases in the monetary offer.

- » Laptop and Handy
- » Company Pension Scheme
- » Direktversicherung (pension insurance policy)
- » Shares / Stock Options
- » Profit Sharing
- » Company loans
- » Further training / education
- » Not common in Germany – Health insurance

An attractive “salary package” should contain at least some of the above fringes. In general, candidates have started to put a higher value on long term benefits as opposed to immediate monetary gratification.

## 1.4 Notice Periods

In general, there are two types of notice periods – statutory and individual. The shortest notice period of 2 – 4 weeks to month end in both cases is during the (generally) 6 month probation period, otherwise future employers may have to wait considerably longer before a candidate becomes available.

### Statutory notice period

The statutory notice period of an employee who has been with the same employer for

- » 2 years is one month to the end of a calendar month
- » 5 years is 2 months to the end of a calendar month
- » 8 years is 3 months to the end of a calendar month
- » 10 years is 4 months to the end of a calendar month
- » 15 years is 6 months to the end of a calendar month
- » 20 years is 7 months to the end of a calendar month

### Individual Agreement

It is not uncommon (or illegal) for companies to negotiate individual notice periods with their employees as long as they are not shorter than the statutory regulations. These may differ from company to company, across industries and hierarchies but most common are

- » 3 months to end of calendar month
- » 6 months to end of calendar month
- » 6 weeks to quarter end
- » 3 months to quarter end
- » 6 months to half year end (seldom / only for very senior managers)

Earlier release may however be negotiated.



**On average the future employer will probably have to bridge a gap of about three months between contract signing and start date of incumbent.**

## Section 2 – First step to successful recruiting - Job specification

2.1	Education	20
2.2	Language Skills	20
2.3	Key Account Contacts	20
2.4	Specific Product Knowledge	20
2.5	Home office versus local presence	21
2.6	Leadership experience	21
2.7	Seniority	21
2.8	Salary	21
2.9	Summary	21
2.10	Sample Job Specification	22

## First step to successful Recruiting – Job specification

In general terms it is easy to define what type of candidate would be most promising for an Irish company starting a young business in Germany

.....

“good salesman, someone who can get the business up and running quickly, not too expensive”

.....

However, this is only the outer packaging – the real difficulty is deciding what needs to be inside in terms of specific experience and contacts and this should be the ultimate driver of the recruiting process. Most companies know intuitively what to look for in the home market based on past experience and indepth knowledge of what the market has to offer as well as how to generate business in a known universe.

At a macro level the candidates will look and feel the same but on a micro level critical ‘must haves’ need to be clearly defined.

### 2.1 Education

Depending on who the decision makers in the client companies are, third level education may be essential. Natural sales ability and a “nose” for opportunity can open doors but if the “budget holders” with the German customer are academics / engineers by background, acceptance and image can be strongly influenced by the title on the business card.

The status of a full academic education or the benefit of speaking the “lingo” of the engineer in Germany should not be underestimated. It often makes a subtle but significant difference.

### 2.2 Language skills

Fluent English is a must have. Even though daily business will be conducted locally, the value of fluent communication to and from the market should not be underestimated. Valuable synergies and knowledge transfer will be lost if the candidate does not feel comfortable with picking up the phone, not to mention participation in business and strategy meetings and / or acting as a benchmark and reference for the market.

It may seem obvious and barely worth mentioning but a surprising number of Germans – young and old, academic or not – do not actually master the language particularly well or else grossly overestimate their level of fluency and comfort.

Candidates should be in a position to apply for the role and conduct interviews in English easily (first test).

### 2.3 Key Account Contacts

Should the candidate actually know and have dealt with decision makers within the customer environment he/she must have worked for a direct competitor and/or a company selling products or services to the same target.

This may mean that the candidate can only be found in a handful of companies and/or specific region. The narrower the target group the more focussed the recruiting method must be and the more advice and support the hiring company will require in identifying and attracting the limited potential.

If prepared to do without first hand contact knowledge the hiring company may have a simpler recruiting process but a significantly longer lead time to winning business.

### 2.4 Specific Product knowledge

Depending on the complexity of the product / service, indepth technical know-how may be necessary to understand and sell the business.

Once again this will determine the current working environment of the future incumbent and ultimately the size and location of the target group.

The trade-off between existing and trainable product knowledge should be carefully weighed up in deciding between must have / nice to have skills.

## 2.5 Home office versus local presence

Allowing the candidate to work from home will help circumvent regional / mobility issues and / or the cost of location. The hiring company pays a relocation package as a rule of thumb. However in terms of prestige and image a sales office will probably make more impact. The closer this is to the hub of the market the better the Irish company can position itself as a serious player and investor in the market.

Serious cost / benefit analysis should provide the best strategic business decision and ideally an “available” candidate should not determine location.

## 2.6 Leadership experience

Good sales people don’t necessarily make good managers – of people or businesses.

On the one hand candidates who have already headed up a team may be harder to attract to an initial one-man-show and cost more money.

On the other hand and depending on how the business is planning to grow locally in terms of headcount, the first hire may quickly need additional people, commercial and management skills.

## 2.7 Seniority

In specific segments young, dynamic, modern executives are a recipe for success whereas more traditional industries may demand greying temples and membership in an “old boys network”.

Needless to say, one won’t be successful in the other and thus some considerable thought must be given to the ideal “outfit and seniority” of the candidate.

Observing and analysis at industry events may help solve the problem and in general a good recruiting consultant who knows the segment should be able to give valuable input into weighting this criteria.

## 2.8 Salary

All of the above factors influence salary but so do budgets, internal structures and grades.

On the one hand the “market price” has to be paid and the requirements of the specification fulfilled but internal issues need to be taken into consideration.

Ultimately however the sum and weight of various requirements should determine the salary range which, as indicated, will probably tend to be higher than local salaries at the same level.

## 2.9 Summary

Packing too many wishes into the job specification may lead to chaos. The 100 % candidate may not exist or not be motivated and in the hiring panic suddenly all criteria are forgotten.

It is important to rank requirements and put most emphasis on the most important priority in directing and managing the recruiting process.

Projected results and not salary alone should not dictate the profile.

## 2.10 Sample Job Specification

<b>1. POSITION</b>	NEW BUSINESS MANAGER GERMANY
<b>2. COMPANY</b> Overview      Legal Form Special Characteristics   Location	<p>The company is part of an international group founded in the United States almost 50 years ago. Known as a leading edge supplier of disposal personal care and medical products for world renowned brands and retailers, the company has grown to become a global leader in its field. Today more than 1,500 people are employed at locations in USA and Europe generating a turnover of more than €400 Mio.</p> <p>The international division based in Ireland is responsible for growing the business outside North America. Expansion in Europe has been rapid and the current production facility in the UK will soon be complemented by a brand new show-case production unit in Germany, with state-of-the-art manufacturing and packaging technology, to provide a wide range of innovative products for the European market.</p> <p>The German market is a core and primary target for the company, not in the least because of the huge domestic potential but also due to the significance of this central geography and culture in developing further Western (German speaking) and Eastern European markets within the broader international expansion strategy.</p> <p>The German company is a GmbH</p> <ul style="list-style-type: none"> <li>» Technology leader; strong commitment to innovation</li> <li>» Ambitious growth targets based on impressive track record (quadrupled in size in Europe past 6 years)</li> <li>» Strong presence in growing segment</li> <li>» Strong corporate culture based on characteristics such as integrity, fairness, pragmatism and ambition</li> </ul> <p>Production facility in East Germany</p>
<b>3. POSITION</b>	
	<pre>                     graph TD                         CEO[CEO International Operations Ireland] --- SMD[Sales &amp; Marketing Director International]                         SMD --- NBMG[New Business Manager Germany Grocery/Discount Channels]                         SMD --- OISMO[Other international and Ireland-based Sales/Marketing Operations]                     </pre>
Aim	To develop and grow business with major retail accounts in alignment with the international group’s objectives, plans and budgets through professional management of all necessary and relevant strategic and operational initiatives.

Main Tasks	<ul style="list-style-type: none"> <li>» Development of tailor-made business plans for individual accounts</li> <li>» Manage business relationship with all relevant contacts within said accounts, ensuring that the company becomes known and respected as preferred supplier for disposable personal and household products</li> <li>» Presentation of product ranges as well as initiation of innovations per customer demand and negotiating terms of supply for all products</li> <li>» Regular (monthly) reporting and liaison with Sales &amp; Marketing Director at HQ to ensure optimal market and personal progress measurement as well as timely identification and exploitation of market opportunities</li> <li>» Monthly forecasting to enable accurate production and supply volumes</li> <li>» “Champion” Account Specific Projects</li> <li>» Liaison with colleague in local market as well as cross functional contacts throughout the company to ensure customer satisfaction targets are met and exceeded</li> <li>» Act as key contact for the company in Europe identifying, reporting and acting on any development within the local market which could be of benefit to overall company development</li> <li>» Develop business outside German market (German speaking countries, Eastern Europe) as overall progress and resources allow</li> <li>» Constant monitoring of competitor developments in market and initiation of reactionary measures as appropriate</li> </ul>
<b>4. FUTURE INCUMBENT</b>	
Education	University / College graduate (or equivalent standard) in relevant discipline.
Professional Experience	<p>The ideal candidate should have gained experience in a consumer goods environment where professional Key Account management is general practice.</p> <p>He/she should ideally have first hand “private label” selling experience and a proven track record. He/she must have up to date contacts with senior decision makers in the German Grocery / Discount channels.</p> <p>A relevant business experience of at least 6 – 8 years is necessary.</p>
Personality	<ul style="list-style-type: none"> <li>» Entrepreneur with hands-on approach / self-starter and passion for business</li> <li>» Able to develop business from small base</li> <li>» Ability and presence to command attention and make impact at top decision making level in trade</li> <li>» Strong sales orientation coupled with well developed strategic and business management skills</li> <li>» Good head for numbers i.e. ability to adapt to and operate in cost / price conscious environment</li> <li>» Happy to take initiative and drive business</li> <li>» Able of adapting to and managing cultural diversity</li> <li>» Excellent communication skills</li> </ul>
Age	» mid 30`s upwards
Nationality	» German
Languages	» German native, English fluent
Location	» Open

<b>5. CONTRACTUAL DATA</b> (not given to the candidate)	
Probation Period	» 6 months
Personnel Responsibility	» initially none
Career Opportunity	» As the company is a subsidiary of an international group there are always possibilities to develop further.
Nature of contract	» Standard contract, open end
Compensation	» The total remuneration is subject to an annual performance evaluation.
Salary	» The annual salary will be in a range up to €100,000 plus bonus. A company car is included in the package
Costs of Relocation	» probably not necessary (home office possible)
Terms of Notice Period	» 3 months to quarter
Availability	» as soon as possible

## Section 3 – Choosing the Recruitment Method

3.1 Networking	26
3.2 Going it alone –Advertised Selection /Own Label	28
3.3 Advertised Selection / Consultants Label	29
3.4 Executive Search / Direct Approach	30
3.5 Interns / Students / Temporary Employees	32

## Choosing the Recruiting Method

Armed with a clearly defined job specification the next step in the process is arguably the most difficult – how to

- a) Identify
- b) Approach
- c) Evaluate
- d) Attract
- e) Board

the right candidate. Irish companies will not be the only ones faced with this challenge in the highly competitive market in 2008 but it is important to remember that a newcomer will be faced with some additional handicaps:

- » Even highly successful Irish companies will probably not carry a “magnet brand” to automatically attract top talent.
- » “New ventures” are often perceived as risky, particularly in the aftermath of the “dot bombers”, regardless of the industry.
- » Even though Ireland’s image in Germany tends to be very positive, associations with the country tend to be more related to Guinness, green fields and red hair than a centre for economic growth, innovation and business excellence.
- » Well-established indigenous German companies and other internationals will be trying to attract exactly the same talent.

Cost is usually the deciding factor in choosing how to recruit. However for a business setting up a presence in what has been predefined as a high potential market the job specification should drive the process, not forgetting that timing is also of the essence.

**What is the latest start date by which the “right” candidate needs to be on board and successfully operating before opportunities and money are lost.**

This puts the recruiting issue into a somewhat different light. Bad hires and missed deadlines will probably cost the hiring company more in the long run and thus puts the investment in the recruitment process into perspective.

**The return on money spent wisely on successful recruiting will far outweigh the pain of initial spend.**

The following choices with all their merits and shortcomings will be available.

### 3.1 Networking

Networking at various levels is wise and should be part of the process. Using what is available will help hiring companies get a feel for the market, identify sources and leads and may even lead to a lucky break.

- » Use an industry-related event / trade fair to “mingle” and establish primary contacts with relevant players; ask about potential candidates and recommended recruiters.
- » Check with the German Employment Bureau (Bundesagentur für Arbeit) in the region or its division ZAV (Zentrale Auslands- und Fachvermittlung) in Bonn ([www.bundesagentur.de](http://www.bundesagentur.de)) to see if by chance a candidate who is “on the beach” can be generated.
- » Germany is a maze of industry associations (Verbände) which may be able to give pointers or even have a (free / low price) online marketplace. Some of the most relevant are listed on the following page.

#### Advantages

- » Low cost
- » Good and easy way to get first hand information

#### Disadvantages

- » Unreliable / no guarantees
- » Even if a candidate is generated no market benchmarking takes place; people recommend people known to them as opposed to “top” candidates
- » The temptation is big to take the first “available” contact
- » It can waste time. Bearing crucial starting deadlines in mind following leads that may not lead to a hire is risky

Networking can be an ongoing process during the entire recruiting phase. There is no rule that says candidates generated out of networking cannot be included in the process with those coming from other sources but beware of timing and reliability issues.

## Industry Associations – Verbände

BDI ( <a href="http://www.bdi-online.de">www.bdi-online.de</a> )	Bundesverband der deutschen Industrie e.V. (general industry)
ZVEI ( <a href="http://www.zvei.org">www.zvei.org</a> )	Zentralverband Elektrotechnik- und Elektronik-industrie e.V. ( <i>electrotechnical and electronics</i> )
BITKOM ( <a href="http://www.bitkom.org">www.bitkom.org</a> )	Bundesverband Informationswirtschaft, Tele-kommunikation und neue Medien ( <i>information technology, telecommunications and new media</i> )
BREKO ( <a href="http://www.breko.de">www.breko.de</a> )	Bundesverband Breitbandkommunikation ( <i>broadband communication</i> )
VDE ( <a href="http://www.vde.de">www.vde.de</a> )	Verband der Elektrotechnik, Elektronik, Informationstechnik ( <i>electrotechnical, electronics and IT</i> )
VDMA ( <a href="http://www.vdma.de">www.vdma.de</a> )	Verband Deutscher Maschinen- und Anlagenbau e.V. ( <i>plant and equipment</i> )
VDA ( <a href="http://www.vda.de">www.vda.de</a> )	Verband der Automobilindustrie e.V. ( <i>automotive</i> )
BDLI ( <a href="http://www.bdli.de">www.bdli.de</a> )	Bundesverband der Deutschen Luft- und Raumfahrt-Industrie e.V. ( <i>aviation and aerospace</i> )
F + O ( <a href="http://www.spectaris.de">www.spectaris.de</a> )	Verband der deutschen feinmechanischen und optischen Industrie e.V. ( <i>fine mechanical and optical</i> )
VCI ( <a href="http://www.vci.de">www.vci.de</a> )	Verband der chemischen Industrie e.V. ( <i>chemical</i> )
MWV ( <a href="http://www.mwv.de">www.mwv.de</a> )	MWV Mineralölwirtschaftsverband e.V. ( <i>mineral oil</i> )
BPI ( <a href="http://www.bpi.de">www.bpi.de</a> )	Bundesverband der Pharmazeutischen Industrie e.V. ( <i>pharmaceuticals</i> )
GKV ( <a href="http://www.gkv.de">www.gkv.de</a> )	Gesamtverband kunststoffverarbeitende Industrie e.V. ( <i>plastic</i> )
BVE ( <a href="http://www.bve-online.de">www.bve-online.de</a> )	Bundesvereinigung der Deutschen Ernährungs-industrie e.V. ( <i>food</i> )
BDSI ( <a href="http://www.bdsi.de">www.bdsi.de</a> )	Bundesverband der Deutschen Süßwarenindustrie e.V. ( <i>confectionery</i> )
DBB ( <a href="http://www.brauer-bund.de">www.brauer-bund.de</a> )	Deutscher Brauer-Bund e.V. ( <i>brewing</i> )
BSI ( <a href="http://www.bsi-bonn.de">www.bsi-bonn.de</a> )	Bundesverband der Deutschen Spirituosen-Industrie und Importeure e.V. ( <i>spirits and imports</i> )
VdC ( <a href="http://www.verband-der-cigarettenindustrie.de">www.verband-der-cigarettenindustrie.de</a> )	Verband der Cigarettenindustrie e.V. ( <i>cigarettes</i> )
VDI ( <a href="http://www.vdi.de">www.vdi.de</a> )	Verband Deutscher Ingenieure ( <i>engineers</i> )

For an overview of all industry (sub)associations see [www.verbaende.de](http://www.verbaende.de)

## 3.2 Going it alone – Advertised Selection / Own Label

Placing a job advertisement in a selected medium without enlisting the services of a recruiting partner is one way of “going public” with the job offer. Some of the routes available include:

### Internet job sites

There are masses of generalist and specialist internet sites available. An exact ranking / qualification of which is next to (if not) impossible. Some of the most common (international) sites with an established presence include:

www.jobpilot.de / www.monster.de	Generalist
www.jobware.de	Generalist
www.jobscout24.de	Generalist
www.stepstone.de	Generalist
www.stellenanzeigen.de	Generalist
www.experteer.de	Generalist
www.gulp.de	IT
www.pharmajob.eu	Pharmaceuticals
www.rekruter.de	Generalist
www.xing.com (Market Place)	Generalist
www.health-job.net	Healthcare
www.juve.de	Legal
www.newjob.de	SAP jobs
www.ingenieurkarriere.de	Engineers
www.ingenieur1.de	Engineers
www.jobkurier.de	Engineers

### Cost

Depending on the format, design, duration, regionality of the advertisement costs start at around €500 up to around €2,000.

### Classic print media

Print media can provide a nationwide established platform for reaching potential candidates. Particularly the FAZ – Frankfurter Allgemeine Zeitung – was once the established medium for high-end job recruiting. In the meantime almost all provide a combination of print and online services. Some of the best known include:

Print	Online
FAZ – Frankfurter Allgemeine Zeitung (national)	www.faz.net
Süddeutsche Zeitung (more oriented towards Southern Germany)	www.sueddeutsche.de
LZ – Lebensmittelzeitung (national / all types of consumer jobs / particularly food / beverages)	www.lz-net.de
VDI Nachrichten (national / all types of jobs for engineers)	www.ingenieurkarriere.de www.vdi-nachrichten.com

### Cost

With the above print / online media combination is possible. Prices for online advertisements are fairly much in line with standard internet websites. Print remains however a relatively expensive alternative and depending on size can cost several thousand euros. FAZ is the price leader in the market and before the onset of internet alternatives was considered the most prestigious posting medium for high level positions.

### Advantages

- » Good cost control option (online)
- » Quick turnaround – within 2 weeks of posting results should be obvious

### Disadvantages

- » As with all advertised selection target group is limited to candidates actively looking for a new position. A huge portion of market potential will thus not be reached.
- » Even those looking for a job may not find the advertisement. Specific “key word” search mechanisms may limit access. If advertisement is placed in English (which is advisable as candidates must speak English) the German job title should ideally be included to facilitate hits.

- » Applicant handling / selection will swallow internal HR capacity. It takes more time to evaluate applications from a foreign environment.
- » Without the routine of evaluating profiles from a new market potential may be overlooked or weak CV's not instantly recognised.
- » Some candidates may not feel comfortable applying to an unknown brand / start up venture and "sell" is limited in a short advertisement.
- » The hiring company has no control over how candidates interpret the written word.
- » Print advertising is relatively expensive.

### 3.3 Advertised selection / Consultants label

There are two ways to use an established consultants label in advertised selection, each with merits and shortcomings.

#### Consultant as P.O.Box

In this case the consulting company is the "brand carrier" and the client / hiring company may or may not be named in the advertisement. The choice of media (print / online) is mutually defined and the consultant acts a clearing agent. CV's are gathered and forwarded, without evaluation or ranking to hiring company

#### Cost

- » Cost of advertisement plus "handling fee" of €3,000 - €5,000 if going with established consultant.

#### Advantages

- » If the consultant company is one of the big names in the industry and consistently appears in media the "unknown" element is taken out of the advertisement. Candidates who know and recognise the consultant brand will perceive more security in venture / trust in the known brand.
- » Within 2 – 3 weeks results will be known.

#### Disadvantages

- » All the previously listed apply – target group limited to job seekers, risk of not finding candidate, binding of internal resources, evaluation difficulties.
- » There is no additional "service" for the fee paid in terms of genuine consulting support.

#### Consultant Full Service

The consultant offers additional services to support the hiring company such as design and texting, candidate interview and appraisal, negotiation support.

#### Cost

- » Consulting fee (one of below)
  - 20 % - 25 % of salary
  - Approx. €15,000 - €20,000
  - Consultant man day rate of ≈ €2,000
- plus cost of advertisement (paid by hiring company) plus expenses
- » In the meantime many consultants offer extended support to complement the quantity / quality of candidates generated from the advertisement i.e. additional internet / database research up to and including full "headhunting" or direct search service. Each additional service has its price and depending on the consultants the combination advertisement / direct search can cost up to the standard minimum fee of €35.000.

#### Advantages

- » The consultant manages the evaluation process and can be expected to provide the hiring company with A, B, C shortlist of candidates bench marked against job specification and each other
- » The consultant handles correspondence, scheduling, general administration leaving hiring company resources free
- » The hiring company has a "trusted advisor" who will help to make sure that good candidates are treated accordingly and support in the negotiation / boarding process
- » Additional candidate sources (if requested) upgrade the quantity / quality of choice for hiring company.

#### Disadvantages

- » Without extra services the risk of all advertised selection – target group limited to active job seekers and risk of not having the right applicant in candidate pool.
- » The quality and quantity of work put into generating candidate from other sources is very difficult to control and thus the hiring company may pay a lot more for extra work which is not done.

- » Direct search (headhunting) is a business which requires know-how, dedicated research, extensive networks and professional processes and methodology. The advertised selection consultant may not be in the possession of these resources.
- » Depending on the fee structure of the consultant plus the cost of the advertisement it could be a high investment low return venture for the hiring company.

### Important questions to ask

- » Does the consultant have the name / image / reach to attract more and better candidates than competitors
- » For what level positions is the company known (salary, hierarchy)
- » Who will interview candidates (seniority, experience of individual)
- » What is the exact scope / nature of additional services to be invoiced? How will this be invoiced? How will this be documented for the hiring company? Who will be doing this work
- » What counts as “expenses”? Are expenses invoiced as accrued or at a nominal rate?
- » What are key milestones / timing?
- » What guarantee does the company give
  - a) That they can find the right candidate
  - b) If the candidate leaves the company within a specified period

### Key Players

The following consultants have the strongest tradition of advertised selection in the German market and also offer additional sourcing services up to and including direct search.

- » Kienbaum Executive Consultants
- » Baumann Unternehmensberatung
- » Mercuri Urval GmbH
- » Steinbach und Partner
- » Dr. Heimeier + Partner
- » Mummert + Partner

## 3.4 Executive Search / Direct Approach

Executive Search is the most comprehensive recruiting method in terms of market / target group penetration / process control for the hiring company.

The consultant provides full support

- » Help to define job specification relative to market potential
- » Advises hiring company on definition of target group and identifies / contacts relevant potential by means of sophisticated research and networking as well as internet utilisation
- » Interviews / evaluates / presents A B C of candidates (including longlist, shortlist)
- » Support during negotiation / boarding / integration of candidate

More than 50 % of all recruiting in the market is done via the direct search method and more than 80 % of projects include direct search in combination with another method.

Most of the highest ranked direct search companies can offer advertised selection service on top of direct approach and have separate brand for the selection business.

### Cost

As a rule of thumb, one third of first year's annual salary of hired candidate (incl. bonus) or minimum fee of €35,000. The fee is usually billed in three instalments, 1st instalment at the beginning of the search and remaining after defined time deadlines or according to progress e.g. presentation of candidates, completion (signing of contract) of assignment. On average an assignment should take not more than 3 months to complete.

### Note

The market is vast and not controlled. There are thousands of consultants in Germany (one man shows through to research companies and non-ranked specialists / smaller generalists). These companies may offer lower fees for reduced service levels. As they do not appear in the official rankings / listings it is difficult to qualify them and the market in its entirety. One of the few ways to identify and evaluate these operations is by personal networking / recommendation.

### Advantages

- » The hiring company has full support of a professional consultant in all phases of the recruiting process
- » The hiring company controls the process; can and should define timelines for reporting with consultant

- » Candidate generation is not left to chance. Both active job seekers (internet, consultant database) and identified talent are incorporated into the process. The process attracts candidates who would not think of applying themselves. They do not feel like an “applicant” but an invited guest and thus enhance the candidate pool by a whole new dimension. The consultant controls what data is given to candidates, has the opportunity to “sell” the position from stage to stage in the process
- » Target group process ensures that relevant companies employing candidates with the right contacts / experience are thoroughly analysed
- » Top consultants give guarantees
  - That they will search until the position is filled
  - That they will “replace” candidates who leave / have to leave in the first 6 months
  - That they will not approach employees of hiring company over specified time
- » At the end of the process the hiring company knows to have found the best possible candidate a targeted segment of the market has to offer
- » Is the consultant willing to “show” reference information
  - Clients
  - Assignments
- » Who will be conducting the work (research / interviewing)
- » What is the level of focus / interest of the consultant (salary / hierarchy)
- » How are candidates found
- » Does the company give guarantees
  - To find candidates; if not is there a fee reduction
  - To “replace” candidates who leave
  - Not to “hunt” employees of hiring company
- » What is the company’s role in candidate negotiating / boarding / integration
- » How are expenses invoiced – as accrued or nominal percentage of fee
- » What are timing / key milestones
- » What documentation is provided to hiring company (longlist / shortlist / candidate reports)

### Disadvantages

- » Most expensive recruiting method
- » Candidate turnover slower – usually 4 – 6 weeks for consultant to provide shortlist
- » It takes more effort to attract / motivate candidates who are not actively looking for a job
- » Research can “miss” candidates how have moved outside core target
- » Some of the key market players may not be interested in representing “small” companies / filling positions under €100,000 salary
- » Some of the larger players have partners “sell” position but delegate the work back to juniors, who have not met the client

### Important questions to ask

- » Has the company the image /size to attract “A”talent
- » What is the competence level / seniority of handling consultant (is it the person who sold it?)
- » Has the consultant specialist knowledge in specific
  - Industry
  - Functional area
- » What competitors / market players are off limits

### Key Players

The following are the highest ranked Executive Search companies (by turnover) – most of which have a separate “label” under which advertisements can be placed if requested by hiring company. (Source: BDU-Industry Association – excluding top ranked advertising players already listed)

- » Egon Zehnder International GmbH
- » Ray & Berndtson GmbH
- » Heidrick & Struggles Unternehmensberatung GmbH & Co. KG
- » Russel Reynolds Associates, Inc.
- » Signium International GmbH & Co. KG
- » Deininger Unternehmensberatung
- » Delta Management Consultants GmbH
- » Korn/Ferry International GmbH
- » Gemini Executive Search GmbH
- » Heads GmbH & Co. KG
- » Civitas International Management Consultants GmbH
- » Interconsilium GmbH & Co. KG
- » Edward W. Kelley GmbH
- » LAB Lachner Aden Beyer & Company GmbH

### 3.5 Interns / Students / Temporary Employees

To recruit interns / students posting in the following is recommended:

- » University / UAS job board
- » [www.karriere.unicum.de](http://www.karriere.unicum.de)
- » [www.praktika.de](http://www.praktika.de)

For temporary employees the following represent the largest temp agencies:

- » Randstad Deutschland GmbH & Co. KG, Eschborn
- » Manpower GmbH & Co. KG, Frankfurt am Main
- » Persona service Verwaltungs AG & Co. KG, Lüdenscheid
- » Adecco Personaldienstleistungen GmbH, Fulda
- » DIS Deutscher Industrie Service AG, Düsseldorf
- » Tuja Zeitarbeit Holding GmbH, Ingolstadt
- » Hays AG, Mannheim
- » Auto Vision GmbH, Wolfsburg
- » ZAG Zeitarbeitsgesellschaft GmbH, Hannover
- » Bindan-Gruppe, Stuhr/Bremen



## Getting the Most from the Interview

Interviewing is a much documented science backed by various schools of thought and theory, the relative merits of which go far beyond the scope of this recruiting guide. Still the aim of any interview is to evaluate whether there can be mutual longer term benefit from a working relationship, regardless of the personal style of the interviewing partner.

A couple of basics can help to maximise the output of the interview

- » If possible first interviews should take place at a hiring company location (if it already exists locally). This will give candidates a feel for the solidity of the business and quite simply most people want to know how their future place of work will look. If the local presence is still to be set up and it is not feasible to fly all candidates to Ireland at the initial stage the location should at least be conducive to and facilitate a professional and discrete discussion. Candidates may be cautious of being “seen” interviewing so it is best to have the first discussion in a formal business setting. Breakfast / Lunch / Dinner meetings are usually not a good idea for first interviews
- » Even if the working style / outfit of the company is casual it is common practice that interview dress code is formal business (for all parties)
- » Ideally the candidate should have been informed up front on the roles and responsibilities of all interview partners. “Surprise Guests” or missing discussion partners can throw a candidate. Ideally the future superior should be involved in the initial interview of all candidates
- » Good preparation is important. Specifically when interviewing in a foreign environment even simple things like remembering / pronouncing a name play a part in making the candidate feel he / she is being taken seriously. Also remember that German candidates may not be used to communicating on a first name basis (formal address is “Herr / Frau X” and “Sie”) and it is advisable to ask first
- » The interview will be in a foreign language for either the candidate or the hiring company. Usually the language will be English so a degree of sensitivity (speaking reasonably slowly, distinctly, no slang) to the language barrier is necessary
- » Ideally the CV will be pre-analysed by the hiring company and / or recruiting consultant. The interviewer should have understood prior to the meeting where the candidate could be on / off spec and make sure that relevant points are addressed during the course of discussion
- » To facilitate an open discussion it is advisable to give before taking i.e. the interviewer should introduce himself / herself, pitch and position the company and the role, strategy and vision. This “sell” is necessary not only to engage the candidate but also to give him / her a chance to get used to the nuances of language / accent etc. Jumping in with the question “Why do you want to work for us” would probably be considered presumptuous and irritating. In a competitive market candidates like and need to be “courted”
- » Before launching into the discussion it is best to communicate scheduling or timing plans (“We have allotted roughly one and a half hours”) so that the candidate can better assess how much depth is required and be sensitive to finishing on time etc.
- » At some point in the process the candidate should be given the floor to ask questions which should be answered as openly as possible. This can happen after the introduction or perhaps at the end of the meeting but is best not overlooked, forgotten or postponed because time has run out. Good time management is of the essence
- » Once the candidate takes the stage he / she should be informed exactly what the hiring company is looking for
  - Full chronological description of education and career
  - “Relevant” experience / highlights only
  - Q & A session
- » It is legitimate to ask questions. Should the interviewer feel information is important he should make sure he gets the answers. There is no harm in asking for further explanation if for whatever reason things are not clear
- » Of particular relevance is whether the candidate is an active / passive “job seeker”. Is he / she in other processes? Is there time pressure? Is the candidate “ready” to make a career move? Getting behind the motivation for actually coming to the interview will help to evaluate how serious / opportunistic the candidate actually is and how fast the decision making process may have to be

- » The simple question of what candidate expectations are may seem obvious but can be revealing. What does he / she think the role will / should entail in terms of freedom and limitations, travel, reporting, style, what it could be like working for an Irish company / this specific Irish company. Preconceptions and false hopes need to be identified and addressed
- » By the same token, clearly stating hiring company expectations is just as important to make sure the candidate understands what and how he / she needs to deliver to be successful
- » If relocation is necessary it is important to find out what potential hindrances there are – different state / school going children / working wife -and when the candidate would plan to move i.e. immediately, after probation period, at end of school year etc.

The hiring company should watch out for clear commitment and a realistic plan on how to bridge the gap (weekday apartment, travel arrangements). If the candidate is vague, chances are he / she may not even have discussed it with those affected. It is the most common excuse for dropping out of the process at a later date – “My wife didn’t support the move” – and it is quite legitimate (and advisable) that the hiring company explore this issue

- » The candidate should leave the interview knowing exactly what to expect – when will he / she receive feedback, from whom, how do next steps look, who else will be involved in the decision making process and what will the second interviews entail and more importantly where will it be (Ireland?)
- » There is no harm in showing interest (in fact it can do a lot of good) if it is there. Telling a candidate that the interview went well and that a mutual future could work will not weaken the “bargaining” position but help to cement the interest of genuinely interested candidates and flush out those who are still just playing along
- » If nothing else the hiring company should also use the interview to find out more about the market. Candidates should know and be able to tell what is happening in the competitive arena, what developments are expected and what customers are expecting. This does not constitute “abusing” the process but is a legitimate means to gain valuable market information from candidates who should in any case know and impart with this knowledge

## Cross Checking and Referencing

Double checking information / confirming impressions is a simple process which may help to uncover issues to tackle before a candidate is taken on board.

With the help of the "Arbeitszeugnis" (roughly equivalent in content to letter of reference) and referencing, the future employer can gain better general and specific information on performance and personality

### 5.1 Arbeitszeugnis (letter of reference)

Following a term or period (promotion, cross functional move) employees in Germany have a right to a Zwischen(=between)-Zeugnis or Arbeitszeugnis by law.

Employers have to describe the nature / content of the role as well as various aspects of the candidate's performance, personality and development within the company and this document should be made available to any future employer as elementary part of a standard full application.

However the "Zeugnis" may not be derogatory or limit the individual's chance to develop his career and thus a type of code evolved whereby specific formulations could say one thing but mean something quite different.

Although the art of writing and understanding this code is complex (and not mastered by all who use it) it remains a useful tool for checking track record.

#### The following areas will be covered:

- » Detailed description of roles and responsibilities
- » Evaluation of performance
- » Evaluation of way of working
- » Evaluation of behaviour towards superiors, subordinates (contribution to company, popularity)
- » Evaluation of leadership skills
- » Evaluation of behaviour to external partners as relevant
- » Declaration of by whom contract was terminated
- » Closing formula – often the most telling part of the Zeugnis. Good employee will be thanked for

contribution to company and regret expressed on departure and wished all the best for the future.

Even though non German speakers may have difficulty understanding the intricacies of the "Zeugnis" it may be advisable to enlist the help of someone "in the know" as valuable information may be gleaned from it, even if only to highlight potential weak points for discussion.

### 5.2 Referencing

Candidates must not automatically provide names, contact details of potential referees as part of an original application. However a future employer has the right to ask for referees who have worked with / for the candidate, been customers, professional advisors etc.

Generally, from an ethical perspective, candidates should be given the opportunity to forewarn these referees that a call may come from a future employer or their recruitment partner.

It is generally frowned upon when hiring companies try to "sniff around" and use network contacts or friends of friends to gain information on an individual.

Germans have strong beliefs about data protection and the right to privacy and trying to gain information, especially from non-nominated sources, can backfire in that

- a) People will be generally reluctant to part with critical information especially if they suspect that they could damage reputation.
- b) A candidate who discovers such practices may feel his/her rights have been violated and drop out of the process.

In addition a good rapport needs to be established to facilitate an open discussion with the referee and a mix of open and closed questions is recommendable to verify known data and expand on knowledge of the candidate.

**Quality reference checking can generate huge added value to the evaluation process but ideally should be done by a practiced professional (recruiting partner) with the sophistication and sensitivity to get to the core issues and correctly interpret statements and facts.**

## Section 6 – Boarding

## Boarding

Even when the final short list of candidates has been defined and the hiring company goes into the interview stage it is not necessarily a given that any one of the candidates will actually accept the job. In 2007 recruiters and hiring companies alike have experienced a widespread phenomenon in Germany which speaks for a high level of opportunism and certainly parallel processing in the market. It is difficult to say if this trend will become more extreme but as it stands, hiring companies need to watch out for mistakes, be aware that applicants may go several interview rounds to the offer stage and then withdraw and in the current environment it is not unheard of that even signed contracts are rebuked shortly before start date.

Even candidates who are genuinely interested may be snapped up by others if the process takes too long or the hiring company doesn't "treat them right".

The following pointers are important to ensure a fluent and professional selection and boarding process.

- » Keep boarding process as short as possible; ideally not more than 2 rounds of interviews over a short space of time. Too many decision makers is not advisable
- » German candidates will want to meet their superior first; even if HR is coordinating pre-selection it is a question of status and signals that "important" candidates are interviewed by their future superior
- » If working with a recruiter have him / her accompany interviews (this should be part of the service and not incur extra fees!). The consultant has the opportunity to see the candidate a second time, observe the interaction and may pick up on nuances that would otherwise be missed. A good consultant will know when to intervene and can advise the hiring company on questions of style and form
- » Applicants have to be treated like customers in a competitive market. Direct search candidates do not even perceive themselves as applicants but often as potential business partners. The hiring company will need to "sell" and not presume that the candidate is interested just because he is there. Hard and soft factors must clearly be communicated i.e. product excellence, competitive advantage, track record but also development prospects, corporate culture and vision, people focus etc.
- » If psychometric testing is desired by the hiring company this should be communicated to candidates at the onset. Many have a genuine problem with concept of being tested and can refuse to participate. It is still a conscientious issue for (senior) German candidates
- » If candidates are requested to do a case study it is advisable to do so within the framework of a scheduled meeting (30 minutes preparation time / 10 minutes presentation). Asking / expecting candidates to do extensive preparation "pre-meeting" may not be received well and not everybody is willing / has the time to pull out all the stops and give away too much for free
- » Timely feedback is critical after every stage in the process. This can be handled by the consultant but a quick mail or call from the future superior can make a big difference
- » It is legitimate, acceptable and advisable to check references of final candidates. Ideally, as explained earlier, this should be done by the consultant (as part of the service at no extra cost) if it is to bring the added value it should
- » Before making an offer the candidate should have provided details of current package i.e. base salary and bonus and all fringe benefits. This is the basis for making an offer and even though 10 – 15 % plus has been fairly standard over the past couple of years this may get pushed upwards in the coming environment
- » It is not good practice to make a very low offer first. The hiring company may insult the candidate to the degree that he withdraws from the process. In any case it is considered a sign of genuine interest and respect to make a competitive offer, even if elements are open for discussion and there is still some "room for improvement"
- » It can be a good idea to use the consultant as a mediator in this part of the process, who communicates the proposed offer verbally to "sound out the reaction. Once something is in writing it is hard to take it back. In any case the consultant should also have done some pre-checking with the candidate and be able to advise the hiring company on what will work best"
- » The contract should be professional and have been drawn up by a local legal to avoid pitfalls
- » It is advisable to put a time limit on a contract signed by the hiring company i.e. validity 14 days from signature to avoid losing time if the

incumbent is not going to sign or using it to leverage other offers

- » Depending on the length of time between signing and start date it is advisable to keep up the dialogue with the candidate; regular information on business development, invitations to events or meetings of major relevance. This can be a critical phase where the candidate receives and is tempted by counter offers if not “emotionally” boarded
- » Ideally this should be complemented by visit(s) to Ireland to meet the team but especially in the early integration phase following start date, it is advisable to have incumbents spend up to a couple of weeks in the Irish HQ, getting to know the people, culture, way of working, customer management, local customers, etc.



## Recruiting Do's

- » Pick location carefully – make sure the region can offer the right candidates
- » Design the job specification first – must have should drive process, timing, recruiting method
- » Be realistic in assessing the likelihood of success or failure of working without a recruiting partner
- » Consider all the recruiting alternatives and the relative cost / benefit of each
- » Consider the recruiting fee as part of the investment in the business
- » Ask potential recruiting partners anything you feel you should need to know and especially exactly what you can expect for your fee
- » Closely manage the process insist on reporting timelines and make sure the consultant is working on the assignment
- » Plan and run a tight interviewing and boarding process
- » Be honest with candidates; make sure they understand the opportunities but also the limitations of the role
- » Ask candidates who turn down the offer (or the recruiting partner) for open feedback on reasons why – constructive criticism can help to identify where adjustments need to be made
- » Check references
- » Make sure the candidate is integrated between signing and start date

## Recruiting Don'ts

- » Design the specification against the first available candidate
- » Waste too much time on half-hearted networking
- » Choose the recruiting method based on fee alone – consider all the other costs (internal resources, getting it wrong...)
- » Brief the recruiting partner on “a need to know” basis. Give all the information on plans, targets, vision and culture and let him filter
- » Hide bad press / mistakes (position constructively)
- » Presume the process will be like “any other” in Ireland or other new markets
- » Believe everything you're told – check references and use your recruiting partner to verify data (Zeugnis/reference checking)
- » Forget to inform your recruiting partner on strategy changes / developments during the course of the search
- » “Hide” networked candidates from the recruiting consultant; let them be benchmarked against all others generated through selection or search
- » Take forever to make decision / include too many decision makers in the process. Think and act quickly.
- » Presume that candidates are interested just because they come to interview. “Putting out feelers” and testing market value is not uncommon in today's market.
- » Forget to “sell” the company
- » Promise too much (or too little)
- » “low ball” offer a candidate you are interested in

# A Guide to German Employment Law

Irish Companies in Germany - A Brief Overview of German Employment Law	44
Introduction	45
Applicability of German Employment Law	45
Commencement of Employment	30
Issues Which Arise During the Course of Employment	47
Termination of Employment	48
Industrial Relations	53
Social Security	56
Conclusion	56

## Introduction

As an Irish company operating a business in Germany, not only do you have to pay attention to local economic and cultural issues, but also have to consider the specifics of the national legal system. With regard to employment law, you will find that even though both Irish and German statutes are increasingly guided by European legislation, some German peculiarities still remain which differ from the employment practice you are familiar with in Ireland. This applies not only to the issue of industrial relations, but also to rights and obligations arising on termination of employment. Thus, to ease your market entry into Germany, this memorandum gives you a brief overview on the principal employment legislation in Germany. Nevertheless, please note that the material contained in this document is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal guidance should be sought for specific circumstances and before action is taken.

## Applicability of German Employment Law

German employment law, in principle, is applicable where the regular place of work of the employee is situated in Germany. Thus, where an Irish company runs a business in Germany and the employee – irrespective of his/her nationality – carries out his/her duties permanently or at least predominantly in Germany, the terms and conditions of employment are subject to German employment law. In this regard, it is irrelevant whether the Irish company itself is the employer, i.e. it employs the employee in a local branch or affiliated office, or whether the employee is employed by a subsidiary or affiliated company of the Irish company.

## Commencement of Employment

### I. Advertising for Prospective Employees

When advertising for prospective employees, the employer must comply with the relevant antidiscrimination legislation; e.g. the employer may not discriminate against employees or job applicants on account of their racial or ethnic origin, gender, religion or belief, disability, age, sexual identity. This means, for example, that the employer may not advertise a vacancy publicly (e.g. in a newspaper or on the Internet) or within the workplace (e.g. on the intranet or the notice board) as being available only

for women or only for men. Moreover, announcing a vacancy to be for 'young professionals' could also be seen as an unlawful discrimination on the grounds of age. In the event of a violation of antidiscrimination regulations, the employee or rejected candidate is entitled to claim financial compensation. Since European law stipulates 'effective, proportionate and dissuasive sanctions in case of breaches of these obligations', it will become increasingly important to carefully draft vacancy advertisements and, in particular, letters of refusal in order to avoid liability.

### II. Interviewing and Selecting Prospective Employees

When interviewing job applicants, the employer may ask any question which is in its legitimate interest and relates to the prospective employment relationship. As a consequence, the employer may ask, in principle, about the professional skills and competence of the candidate, his/her knowledge and previous job experience, as well as the results of his/her examinations. On the other hand, the employer is not allowed to ask the interviewee about private issues of no relevance to the job offered. For example, female candidates may not be questioned about issues such as pregnancy, marriage etc. The same goes for questions on union membership or religious affiliation. Where the question posed is discriminating or where the employer requests information without any relevance to the envisaged employment relationship, the job applicant is entitled to lie to safeguard his/her privacy rights. Moreover, in case of discrimination, the interviewee may also claim financial compensation. All other questions which, according to these principles, are allowed must be answered truthfully and in full. Thus, you may find it helpful to train yourself and your management staff on what questions may or may not be asked during the interview process.

### III. Form of the Employment Contract

The German Employment Documentation Act (*Nachweisgesetz - NachwG*), which is similar to the Irish Terms of Employment (Information) Act 1994, specifies that certain particulars of an employee's terms and conditions of employment must be supplied in writing to the employee not later than one month after the beginning of the employment. The statement must contain, inter alia, information on the names of the employer and employee, the date on which the employment began, the scale or rate of remuneration, the hours of work, entitlement to holidays, length of notice, job title and place of work, as well as a general reference to any collective

bargaining agreements that may apply to the employment relationship.

To that end, it is strongly advisable to summarise the main characteristics of the agreed terms and conditions of employment in a written employment contract. Otherwise, the employer runs the risk of having to pay a compensation to its employee if the employment contract does not contain or only partially contains the necessary statement of particulars. Moreover, where no express term has been agreed, an employment court may imply a term after considering all the facts and circumstances of the relationship between employer and employee. Thus, the statement of particulars initially regulates the burden of proof, but does not decide on the validity of the employment contract. Accordingly, the parties can also agree on the terms and conditions of their employment by word of mouth.

#### IV. Fixed-Term Contracts

Employment contracts can either be concluded for an indefinite period with a provision making them terminable on notice, or can be agreed for a fixed term. In this regard, it is important to know that in order to be effective, the fixed term must be stipulated in writing. To comply with this prerequisite, the relevant employment contract must be signed before the employee starts working. Subsequent written confirmation of a fixed term on which the parties have only orally agreed beforehand is not sufficient but results in an employment contract concluded for an indefinite period of time. Furthermore, the fixed term is only valid where it is justified on objective grounds (e.g. fixed-term contract to cover an employee on parental or sick leave) or where statutory provisions (Part-time and Fixed-term Employment Act (*Teilzeit- und Befristungsgesetz - TzBfG*)) specifically allow for a fixed term to be agreed (e.g. fixed term contract concluded with a company within the first four years following its foundation). Such allowance – which does not require an additional objective justification – is provided for by law if the fixed-term agreement, or a maximum of three renewals, does not exceed a total of two years. Otherwise, the employment contract runs for an indefinite period of time and may only be terminated by serving notice (being subject to the provisions of the Protection Against Unfair Dismissals Act – *Kündigungsschutzgesetz - KSchG*). The same applies where the employee continues to work beyond the date of expiration and the employer does not object without undue delay. In respect of employment conditions, it is unlawful

to treat a fixed-term employee less favourably than a comparable non-fixed-term employee engaged in similar work.

#### V. Part-Time Work

Part-time employees enjoy the same rights as do fixed-term employees and full-time employees. Thus, part-time employees may not be treated in a less favourable manner than comparable full-time workers solely because they work part time, unless different treatment is justified on objective grounds. Furthermore, an employee's refusal to transfer from full-time to part-time work or vice-versa does not in itself constitute a valid reason for termination of employment. On the contrary, under German law, every employee is, in principle, entitled to reduce his/her working time and decide on the distribution of working time over the week. The employer may only reject the employee's request if there are operational reasons preventing the employer from employing the employee on a part-time-basis. The fact alone that part-time-work requires a certain co-ordination between the employees and – as a consequence – is more cost-intensive, does not constitute a legally accepted ground to turn down the employee's wish for part-time-work. If the employer does not reject the employee's demand in writing within one month before the proposed start of the part-time employment, the employer automatically has to comply with the employee's request for part-time-work.

#### 6. Restrictive Covenants, Confidentiality

As long as the employment relationship lasts, the employee must not compete against his/her employer. This means – even where there is no express clause in the employment contract – that he/she must well respect the business interests of the employer and may not abuse business opportunities for him-/herself. Furthermore, the employee may not reveal any confidential information to third parties outside the firm.

A restrictive covenant intended to prevent the employee from competing with his/her employer after the employment has ended can only be enforced if it meets certain legal requirements to be valid, namely those of sections 74 – 75 d of the German Commercial Code (*Handelsgesetzbuch - HGB*). Thus, restrictive covenants have to be drafted in writing, and the employee needs to receive a signed copy of the contract containing the restraint. Moreover, the restrictive covenant will only be binding if it serves to protect legitimate business interests of the company and does not hinder the employee's career in a

disproportionate way. Restrictive covenants are null and void if they are extended for a period of more than two years after the employment has terminated. Furthermore, the restrictive covenant clause needs to contain a commitment of the employer to pay a compensation for the duration of the non-competition period, which must not be less than one half of the last annual salary of the employee for each year of the restraint.

Thus, when drafting a restrictive covenant professional advice should be sought to protect your business interests and to avoid unpleasant surprises.

## Issues Which Arise During the Course of Employment

### I. Annual Leave

In Germany, every employee is entitled to a statutory minimum of 24 working days paid annual leave. Sundays and public holidays are not included. With each week consisting of six working days (Monday to Saturday), this amounts to at least four weeks of holiday. Disabled persons are granted five additional days of leave; minors, depending on their age, are entitled to an annual leave of 25 to 30 working days. However, in practice, employment contracts or collective bargaining agreements usually provide more days of leave, normally between 27 and 30 days. During the holiday period, the employee is entitled to his/her usual remuneration.

Since holidays serve the purpose of giving the employee the chance to recuperate, the employer may, in principle, not financially compensate the employee for the leave time, but has to release him/her from the duty to work for this period. On the other hand, the employee may not carry forward leave that was not taken from one leave year beyond 31st March of the next. If holiday cannot be granted due to the termination of employment or for other reasons for which the employer is responsible, the employee is entitled to financial compensation for any outstanding holidays. In this context, it is important to note that an employer that – after having given notice – wants to release the employee from his/her duty to work until the end of the notice period, needs to expressly state that any untaken holidays will be credited against this release period. Where the employer fails to do so, the employee may claim compensation for untaken holidays.

### II. Working Time

Average working hours are limited by law to a maximum of 48 hours a week. In reality, however, the actual working hours for employees do not, in principle, exceed 35 to 40 hours. This is warranted by various collective agreements and common practice.

After finishing the daily work, the employee must be given at least eleven consecutive hours of continuous rest. If the rest period of eleven hours is disturbed, it must be allowed in full after the interruption. The law also provides for breaks between 30 and 45 minutes that must be granted by the employer, depending on the daily working hours of the employee.

Employees can be obliged to work overtime if such commitment is expressly stated in their employment contract. Where no express clause is drafted, the employer may only demand overtime where legitimate business interests require the extra work. Thus, a clause concerning the modalities of overtime should be included in every employment contract. In this regard, it is also advisable to regulate the details of payment for overtime hours. Since there is no statutory law that provides for additional overtime pay, it is, in principle, possible to compensate employees for overtime work by the regular monthly remuneration. This has to be expressly stated and is – depending on the particularities of the individual case – only true for a reasonable amount of overtime hours. On the other hand, overtime hours may also, subject to the terms and conditions of employment, be compensated for by granting additional time off.

### III. Maternity Leave

The Maternity Protection Act (*Mutterschutzgesetz - MuSchG*) provides for the protection of pregnant employees and workers who have recently given birth or are breastfeeding. The act covers all employees, irrespective of their length of service. Under the act, an employee is entitled to maternity leave of 14 to 16 consecutive weeks, six weeks prior to and eight or twelve weeks after the birth of the child. Furthermore, a pregnant employee may, in principle, not be validly dismissed during her pregnancy and until four months after giving birth without the prior consent of the competent authorities. Afterwards, the employee is entitled to return to her previous job.

In principle, for the time of the maternity leave, the female employee must not suffer any financial disadvantages as a result of her maternity. Thus, women insured with a statutory health insurance fund receive maternity allowance for the statutory

period of maternity leave, namely six weeks prior to and eight or twelve weeks after the birth and for the day of the birth itself. Maternity allowance is paid by the statutory health insurance company responsible for the employee. An employee not covered by statutory health insurance, e.g., because she is in so-called minor employment, receives a maternity allowance at the expense of the federal government. As maternity allowances often are less than previous earnings, the employer must, generally speaking, pay a supplement to the maternity allowance topping it up to a level equivalent to the previous average earnings of the employee.

#### IV. Parental Leave

Following a 1996 European Union (EU) directive, which has been implemented into German law by the Federal Family Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz – BEEG), parents are entitled to a state-funded monthly parental benefit (Elterngeld) for a period of up to 14 months and are given the right to unpaid parental leave for up to three years. The parental benefit amounts to 67 % of the average monthly income received during the twelve months prior to the child's birth, up to a monthly maximum of €1,800. Parental leave is granted at the discretion of the employee on a full-time or part-time basis and can be taken by the father or mother alone or simultaneously. However, it is restricted to three years for each child. The eight (or twelve) week period of maternity leave is included in this period. Up to twelve months of this total can be transferred to any time until the child reaches the age of eight. However, such a transfer requires the consent of the employer.

#### V. Sick Pay

If an employee has been employed with the employer for at least four weeks and is then absent from work due to ill health, he/she is entitled to receive sick pay from the employer for a six-week period of time in the amount of up to 100 percent of his/her regular salary. Nevertheless, if the illness lasts for more than three days, the employer may refuse to pay the employee until the employee proves his/her incapacity for work by presenting a medical certificate.

#### VI. Salary

Except for businesses in the construction and cleaning industries, there is as yet no statutory minimum wage in Germany. However, most collective tariff agreements provide for a minimum salary in their respective industry sectors. Thus, employment relationships which are covered by such collective tariff agreements (see No. VI 2 b) may not

fall short of the minimum wage regulated by these agreements. Furthermore, an agreed wage may be deemed grossly unfair if it is less than two thirds of the amount provided by the relevant trade union agreement or if wages for full-time work amount to less than the statutory social welfare minimum.

### VII. Changing the Terms and Conditions of Employment

Where the employer wants to change the terms and conditions of employment (e.g., relocate the employee to another workplace, assign the employee to a task different from the one described in his employment contract, reduce the employee's salary, etc.), he will at first try to do so by way of mutual agreement. If no such agreement can be reached, the employer can only enforce the envisaged changes by serving notice combined with an offer to continue work under altered conditions (so-called *Änderungskündigung*). Nevertheless, when doing so, the employer does not only have to comply with the statutory or contractual notice periods, but also has to take account of the provisions of the KSchG. This means that the changes intended by the employer cannot be imposed on the employee at will, but need to be socially justified. While the employment courts are more generous in accepting such 'social justification' where the proposed changes affect the material content of the employment (e.g. relocation to another workplace), the courts are very strict where the changes are aimed at a mere reduction of salary. Such cost-cutting is only possible where the employer can prove that without the envisaged reduction in wages, it will have to shut down the business or at least will have to lay off staff.

## Termination of Employment

### I. Unfair Dismissal

Where an employer intends to lay off staff, it not only has to consider certain formal requirements, but also needs to pay attention to the provisions of the *KSchG*. This act, which substantially restricts the employer's freedom to dismiss an employee, is applicable where the employee in question is employed for more than six months and the employer regularly employs more than five employees in the establishment. Where the employee started to work after the 31 December 2003, the threshold is increased to 10 employees.

The basic rule is that notice, although given in compliance with the statutory or contractual notice period and in writing, is legally ineffective if it is 'socially unjustified'. This means that it is for the employer to show that there is a fair reason for the dismissal. Such fair reason is presumed where the employer can establish that the dismissal is caused by grounds related to (1) the person, (2) the conduct of the employee, or (3) imperative operational demands.

**Personal grounds for dismissal** include reasons related to the capability or qualification of the employee for performing work of the kind he/she was employed to do (e.g. physical or mental impairment, long-term illness, severe drug addiction, loss of required work permit/driving license, etc.). In principle, notice given on personal grounds is only deemed to be valid where (1) certain facts justify the assumption of the employee being continuously unable to fulfil the tasks assigned to him/her under the employment contract, (2) these (expected) 'disturbances of employment' will substantially affect the legitimate business interests of the employer in the future, so that (3) the employer can not be reasonably expected – considering all aspects of the mutual interests involved (e.g. length of service, age of the employee, size and financial resources of the employer, etc.) – to employ the employee any longer. Nevertheless, please note that poor performance usually does not entitle the employer to serve notice on the basis of personal grounds. In this regard, it is important to understand that notice for personal grounds may only be given if the employee cannot be employed elsewhere in the company. This means that before serving notice, the employer first has to relocate the employee to vacancies which better suit the employee's capability or qualification. Only if no such vacancies exist or the employee refuses to accept such offer the employer may terminate the employment for personal grounds.

Reasons for dismissal related to the **conduct of the employee** may be, for example, breach of contract, felony against the employer, being late, absence from work without appropriate excuse, assault on colleagues or the employer, competing with the employer, etc. However, to give the employee the chance to improve his/her behaviour, the employer may, in principle, only dismiss an employee for reasons related to the employee's conduct after having given the employee a warning first. The warning must not only contain a concise description of the disapproved behaviour and the request for immediate improvement, but should also make it clear that the employee is at risk of losing his/her job in the event of recurrence. For reasons

of documentation, any warning should be given in writing. According to rulings of German employment courts, prior warning is only obsolete where the employee cannot reasonably expect the employer to tolerate the behaviour or where there is a breach of confidence. This can only be decided on a case-by-case basis. Thus, in case of doubt, the employer should rather give the employee a mere warning instead of serving notice. Furthermore, notice can only be given where the termination of the employment is a 'proportionate' reaction to the employee's misconduct. This means that the employer has to take into account all circumstances of the individual case. In particular, it has to be evaluated whether the incident put forward to support the dismissal is likely to reoccur in the future or if it was just a one-off mistake which could occasionally happen to anyone. For example, being late once or twice does not justify the termination of a 20-year employment contract. Usually, conduct that may result in dismissal must have occurred during working hours, but in certain cases an employee may be dismissed for other behaviour, if such behaviour is likely to affect the performance of his/her contract (e.g., a play group leader being convicted of an indecent assault on a child outside the hours of work may be considered to be unsuitable for carrying on his/her employment).

The third fair ground for serving notice is where the dismissal is caused by grounds related to **imperative operational demands** (redundancy). A dismissal is given by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish. Typical reasons for giving notice by reason of imperative operational demands are cutbacks, closures or relocations of the business, outsourcing measures, decline in sales, etc. Nevertheless, the loss of a certain position/function alone is not sufficient to consider notice of termination to be socially justified. Furthermore, the employer has to show that there are no vacancies in the company where the employee might be employed in place of his/her former position. Where several employees perform the same or a similar kind of work, the employer has to select the employee to be dismissed on the basis of four criteria (length of service, age, support obligations and disability). Notice may only be given to the employee who – as a result of these so-called 'social criteria' – is the least dependant on his/her job. For example, a 33-year-old mechanic (married, one child entitled to support) who has been with the company

for two years is more likely to be dismissed than a 53-year-old mechanic (married, two children entitled to support) who has been employed for 20 years.

## II. Consequences of Unfair Dismissal

A notice of termination lacking social justification will be deemed null and void. This means that the employee is entitled to return to work. The employer must pay and employ him. Nevertheless, an employee claiming unfair dismissal must file his claim within three weeks of receipt of written notice to the competent employment court. Where the employee fails to comply with this time limit, the dismissal is automatically presumed to be effective and socially justified on fair grounds.

Unlike in Ireland and the UK, the employee may, in principle, not claim compensation. This is true despite the fact that new legislation seems to entitle employees who have been given notice by reason of redundancy to severance pay equivalent to half a month's gross salary for every year of employment. Nevertheless, this 'entitlement' is subject not only to the employee not making use of his right to sue the employer for unfair dismissal within a three-week period, but also to the employer informing the employee of the option to claim compensation in the notice of dismissal. Thus, in the end it is at the discretion of the employer whether or not the employee can claim the compensation. There is neither a statutory obligation to offer the employee a redundancy award, nor can the employee automatically claim any other form of financial remedy. As a consequence, the employer should only offer compensation where the employer feels the need to do so or where the employer wants to prevent the employee from taking legal action. In this regard, it is vital that the employer make sure that the payment of the award is subject to the employee's written waiver of his/her right to challenge the validity of the dismissal in a lawsuit filed at the employment court.

Hence, the German *KSchG* is based on the idea of reinstatement rather than paying compensation. However, in practice, most unfair dismissal claims (about 90 percent) are settled in court by the employee accepting the dismissal and the employer paying a compensation award in return. As a rule of thumb, compensation for termination of employment is calculated by reference to a 'factor', which results in a compensation amount – depending on the age of the employee and the prospects of success of his/her claim – equivalent to between one half a monthly salary (gross) and three monthly salaries (gross) per year of service. Only where the parties refuse to settle

will the employment court either hold the dismissal to be effective or to be null and void. In the latter case, the employee will be reinstated on the same terms and conditions he/she had before notice was given. If the court considers the dismissal to be socially justified, the employee has to leave the company with effect as of the expiration of the statutory or contractual notice period without receiving any compensation at all.

## III. Notice Period

The basic statutory notice period is four weeks effective on the 15th or at the end of a calendar month. This notice period increases gradually, depending on the length of service of the employee. The statutory notice period for an employee who has been employed with the same employer for

- » two years is one month to the end of a calendar month,
- » five years is two months to the end of a calendar month,
- » eight years is three months to the end of a calendar month,
- » ten years is four months to the end of a calendar month,
- » twelve years is five months to the end of a calendar month,
- » fifteen years is six months to the end of a calendar month,
- » twenty years is seven months to the end of a calendar month.

Please note that the statutory restriction of § 622 (2) sentence 2 of the German Civil Code, which only takes into account the years of service spent with the same employer after reaching the age of 25, is currently under review by the European Court of Justice (ECJ). Thus, to avoid discrimination on the grounds of age, you should not apply this regulation until final clarification by the ECJ, but should consider the full length of service when calculating the individual notice periods for your employees. In collective agreements, statutory notice periods may be extended or shortened.

The contracting parties may agree on longer periods of notice in the employment contract. Where the contractual notice period deviates from the statutory notice period, notice needs to comply with the notice period which is longer and thus more favourable for the employee. However, according to German law, the period of notice for the employer may not exceed the notice period for the employee.

#### IV. Extraordinary Termination/Summary Dismissal

In principle, the contracting parties may only terminate the employment contract by giving notice, unless there are grounds justifying a summary dismissal. Such extraordinary dismissal is deemed to be appropriate if 'there are facts due to which - taking into consideration all circumstances of the particular case and balancing the interests of both contractual parties - the party giving notice of termination cannot be reasonably expected to continue the employment relationship until expiration of the notice period or until the agreed end of the employment relationship'. The employment courts have held the following issues to be typical reasons for giving summary dismissal: perpetrating a crime against the employer (e.g. fraud, theft, etc.), divulging business secrets to competitors, persistent and intentional refusal to work, repeatedly being late for work or absence without leave.

To be effective, summary dismissal needs to be given in writing within two weeks of the date the employer learns of the reason for the dismissal. In this regard, the employer does not automatically have to give reasons for the termination, but has only to do so in writing on explicit request of the employee. Since in practice it is often doubtful if an issue may justify a summary dismissal, it is strongly advisable for the employer to not only terminate the contract of employment by summary dismissal, but at the same time terminate it, by way of precaution, by giving notice. Such procedure has the advantage that - where an employment court holds the summary dismissal to be invalid - the employer can use the ordinary dismissal as a back-up.

#### 5. Formal Requirements When Giving Notice

Any notice of termination is to be given in writing. Dismissals stated orally are null and void. Nevertheless, the grounds for the dismissal should not be included in the written notice, but should only be explained orally on request. This avoids the risk of inaccuracies and enables the employer to specify the reason for dismissal in court without being bound to a (deviating) written statement in the notice. Written notice should be given to the employee face-to-face. Where this is not possible, the employer should have the notice delivered by a trustworthy person who knows the content of the letter and was watching when it was put into the envelope. In any case, for purposes of documentation, it is strongly advisable that the employee be asked to sign a duplicate of the notice indicating that it was received, and when. In this regard, please be aware that notice given by registered mail is considered to

be 'received' only upon delivery to the addressee. The information alone that a letter can be picked up at the post office is not equivalent to the receipt of the notice. Moreover, where the notice is delivered by messenger the notice will only be presumed to have been received by the employee on the same day if it is dropped into the mailbox during the regular mail delivery hours, i.e., by approximately 11:00 am. If, for example, the notice is put into the employee's mailbox at 5 pm on 19 July, the employee, in case of doubt, will only be deemed to have received it on 20 July. This needs to be considered when calculating the relevant notice period, as well as the two-week period that is imperative for the validity of a summary dismissal.

#### VI. Special Protection Against Dismissal

For certain groups of employees, the law provides special protection against dismissal:

Female employees who are **pregnant** or have recently given birth may - in principle - not be dismissed within a four-month period of the date of delivery if the employer knows about the pregnancy on the date of termination or is informed about it within a two-week period. The same goes - with effect as of eight weeks prior to the beginning of the parental leave - for employees on **parental leave** and employees who applied for parental leave.

Serving notice on **disabled employees** or employees officially recognised as the equivalent of disabled persons requires the prior consent of the competent integration office (*Integrationsamt*). Where the employer does not know about the employee's (hidden) disability and thus gives notice without first having contacted the integration office, the dismissal is, in principle, deemed to be null and void if the employee has applied for recognition of his disability before having received notice and informs the employer of his application within four weeks of receipt of notice. However, due to new legislation the employer may serve notice without having to contact the integration office first if the employee's disability has not been properly proven at the time of the notice or the competent authority could not decide on the employee's application for recognition as a 'disabled person' within a three week and seven week period of time, respectively, because of the employee's failure to co-operate. Where the employer is not sure about the need to involve the integration office, he should - parallel to serving notice - request the official consent of the authority as a precaution. In doing so, he will lose no time if it turns out afterwards that notice

was invalid because of a lack of approval by the integration office. On the other hand, if no approval was required, the authority will confirm this by issuing a so-called 'negative attest'.

**Employee representatives** may only be dismissed if there are grounds justifying a summary dismissal, i.e., serving notice requires an extraordinary cause. Moreover, such dismissal is subject to the prior approval of the works council. In this regard, it is important to understand that any activity related to the employee's function as elected employee representative may not be considered fair grounds for extraordinary dismissal. Nominees and candidates for the election of a works council enjoy the same protection within six months of the publication of the election results. This also applies to deputy members of the works council if they have covered for a member of the works council for at least one day.

The employment contract of a **trainee** or **apprentice** may only be terminated by notice within the first three months of employment. If this probationary period has elapsed, the employee may only be dismissed for extraordinary reasons.

Furthermore, please note that some **collective bargaining agreements** safeguard that employees who have reached a certain age (usually 55 and older) and have been employed for a certain period of time (usually ten years or longer), may only be dismissed for extraordinary reasons or may 'not be made redundant at all'. According to rulings of the German Federal Employment Court (*Bundesarbeitsgericht – BAG*), such wording does not fully exclude the employer's right to lay off older staff, but limits it to serving notice for extraordinary reasons. Thus, when making employees redundant, the employer first has to dismiss younger employees assigned to the same task as the relevant older employee before he can serve notice on older employees. However, due to antidiscrimination legislation, it needs to be thoroughly checked if the relevant collective bargaining agreement is discriminatory on the grounds of age and is thus invalid.

Employees affected by a **transfer of undertaking** or a **merger** may not be given notice because of the transfer or merger alone. These measures do not in themselves constitute grounds for dismissal by the transferee or transferor. Nevertheless, they do not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce. Consequently,

the employer may not state the transfer or merger alone as reason for the dismissal, but needs to focus on the reorganisation of the business which goes along with the transfer/merger and results in the loss of the requirement to carry out work of a particular kind (see No. V 1).

## VII. Information of the Works Council

The works council (see No. VI 1 a) has the right to be informed and consulted prior to every dismissal. Where the employer wants to terminate the employment contract by notice, the works council may comment on the dismissal within one week after having been properly informed of the envisaged dismissal and the reason for dismissal (including information on the employee's name, age, length of service, maintenance obligations, the kind of termination (summary dismissal or termination by notice), notice period, date of termination, place of work, other employees rendering the same kind of work and their social data, special protection against dismissal, etc.). Notice may not be given until the works council has voiced its concerns or the one-week period of time has expired without any reaction from the works council. In the event of a summary dismissal, the works council needs to give its opinion within three days of receipt of the employer's notification. This means that the employer should inform the works council of the dismissal and the reason for it one week (termination by notice) and three days (summary dismissal), respectively, prior to the proposed date of serving notice. Failure to comply renders the dismissal invalid and compels the employer to continue the employment.

## VIII. Collective Redundancies

Where the employer is contemplating collective redundancies, the competent Employment Office (*Agentur für Arbeit*) must be notified in writing – advisably on the forms provided for by the authority – of the projected collective redundancies. Furthermore, the employer should begin consultations with the works council in good time with a view to reaching an agreement. These consultations should, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

To enable the works council to make constructive proposals, the employer should supply the members with all relevant information in good time during the



on the regular number of employees employed in the establishment. For example, while the works council of an establishment with fifteen employees consists of only one member, the works council of an establishment with 8,000 employees comprises 35 members. Each works council is granted a number of information, consultation and co-determination rights (see No. VI 3).

#### *b) Economic Committee*

Where a company regularly employs more than 100 employees, the works council is obliged to establish an economic committee. The economic committee is made up of at least three and at most seven employees of the company, of which at least one member needs to be a member of the works council. The employer has to inform the economic committee in good time and comprehensively (including the submission of the relevant documents) of all economic matters of the company (e.g., economic and financial situation of the company, any measures which could substantially affect employees' interests). Nevertheless, please note that the economic committee may not prevent any measures envisaged by the employer. The final decision on the implementation of the employer's business plans lies with the employer alone.

#### *c) Trade Unions*

Every employee is entitled to join a trade union which represents his/her interests by pooling the voice of the workforce in one organisation. The main purpose of trade unions is to conclude collective bargaining agreements (see No. VI 2 b). A dismissal on the basis of trade union membership or activity is deemed to be automatically unfair.

#### *d) Supervisory Board*

Under German law, the employees are not only represented by the works council on the level of the establishment, but are also granted – depending on the legal form and size of the company – co-determination rights at (supervisory) board level. The supervisory board is not responsible for running the business, but serves the function of supervising the management of the company. Nevertheless, on certain issues, which need to be defined in the articles of association, the supervisory board's approval is required.

In companies with more than 500 employees, one third of the members of the supervisory board consists of representatives of the employees, i.e., employees of the company and trade union

representatives. In companies which regularly employ more than 2,000 employees, the supervisory board is made up of equal numbers of employee representatives and representatives of the shareholders. Nevertheless, since the chairman of the supervisory board is a representative of the employer and is granted additional voting rights, the law safeguards that the employer can overrule the employee representatives at any time.

The employee representatives have the same rights (voting rights, etc.) as do the representatives of the employer. The details of the supervisory board's competence are regulated by company law.

## **II. Collective Bargaining**

The term 'collective bargaining' under German law may refer to two kinds of agreements: either agreements between the employer and the works council (works agreements), or agreements with trade unions (collective bargaining agreements).

#### *a) Works Agreements*

Works agreements are 'contracts' concluded between the employer and the works council, which usually regulate a variety of working conditions for the employees working in the establishment (e.g. working hours, use of technical equipment at work, etc.). Since the regulations of a works agreement are binding for both employer and employee, the employer may not deviate from its provisions to the disadvantage of the employee. Accordingly, the works council as well as the individual employee may enforce the rights granted in a works agreement by referring a claim to the competent employment court.

The employer may, in principle, terminate any works agreement by serving notice with a notice period of three months. Where the employer and works council have agreed on longer notice periods (e.g. six months), notice needs to comply with these terms. Nevertheless, where the works agreement deals with an issue that can be enforced by verdict of the conciliation board (e.g., regulations on working time, IT systems, see No. VI 3), the works agreement – even though notice has been given – does not automatically end, but remains in force until it is replaced by a new agreement.

#### *b) Collective Bargaining Agreements*

Collective bargaining agreements are contracts concluded between a single employer or an employers' association and a trade union which usually regulate a variety of key working conditions,

such as working time, principles of remuneration, notice periods, notice restrictions, etc. They are legally binding between the employer and the individual employee if one of the following conditions is fulfilled:

- » Employer and employee are members of the contracting parties, i.e. the union and the employers' association which signed the collective bargaining agreement.
- » The employer and a union, of which the employee is a member, conclude a collective bargaining agreement specifically for the employer.
- » The parties agree on the application of a collective bargaining agreement in the employment contract (which can be done expressly or by consistent practice).
- » The competent authorities declare the collective bargaining agreement to be generally binding.

Thus, the employer may not deviate from the terms and conditions set out in a collective tariff agreement unless the deviation is to the advantage of the employee. This means that the employer may not, for example, decrease the salary level defined in a collective bargaining agreement for a certain kind of work. However, a pay raise exceeding the standards of the collective bargaining agreement is – of course – possible at any time.

Comparable to works agreements, the provisions of a collective bargaining agreement do not – even though notice has been given or a fixed term has expired – end automatically, but remain in force until they are replaced by a new agreement. Accordingly, the employer cannot deviate from the regulations of the collective bargaining agreement by just leaving the employer's association which signed the collective bargaining agreement. If the employer cancels his membership, the current collective bargaining agreements will remain in force until they are overruled by a new agreement.

### III. Dealing With the Works Council

Each works council is granted a number of information, consultation and co-determination rights.

Firstly, the works council has the right to be informed and consulted prior to every dismissal (see No. V 7).

Secondly, the works council's approval is required on certain specific matters, such as the recruitment of staff and the relocation of employees. The works

council may withhold its approval only on certain grounds, and it is possible for a court to override the requirement for approval. Despite such limitations, the information and consultation must be taken very seriously, because the works council has the ability to delay the implementation of the company's decision.

Thirdly, works councils have genuine co-determination rights in certain areas. Agreement must be reached between the employer and the works council on issues such as working hours schedules, overtime requests, change of pension scheme and the implementation of technological changes which might give the employer information on the conduct or performance of employees (e.g., updates of the IT system). If attempts to reach agreement fail, the employer may appeal to a conciliation board (*Einigungsstelle*). The conciliation board is a type of arbitration tribunal which will make a decision on the matter in question by majority vote. This procedure usually takes between three and twelve months to complete.

If the employer wants to restructure his business, the following needs to be considered: Where such reorganisation results in measures which may negatively affect employee's interests (e.g. closure of undertakings or establishments, mergers, cutbacks of undertakings or establishments, substantial organisational changes, mass redundancies, etc.), the employer needs to inform the works council in good time and comprehensively of the envisaged changes and needs to consult with the works council about the intended concept of reorganisation. Information has to be given as soon as the employer 'plans' to make such changes. Nevertheless, the obligation to inform is not triggered by considerations at a preliminary stage, but only materialises when the employer has made up his mind on certain measures or a certain concept.

In this regard, the employer is obliged to negotiate a so-called 'reconciliation of interests' (*Interessenausgleich*) and a social plan (*Sozialplan*) with the competent works council.

The reconciliation of interests regulates the details of the envisaged reorganisation (what, when, where and how the employer will carry out the proposed measures). There is no statutory obligation to reach an agreement on the reconciliation of interests. However, the employer must seriously attempt to do so. This 'attempt' includes the employer's obligation to contact a conciliation board if no agreement can

be reached. If the employer ignores this procedure without compelling reasons, the works council may try to stop the reorganisation by obtaining an injunction order from the local labour court. Furthermore, employees who are made redundant or suffer other material disadvantages because of the reorganisation may claim a compensation award which may amount up to 18 monthly gross salaries.

The social plan serves the purpose of compensating or mitigating disadvantages which the employees sustain as a result of the reorganisation of the business. Where employer and works council do not reach an agreement, the works council can enforce the conclusion of a social plan by decision of the conciliation board. Usually, the social plan provides for compensation for the employees being made redundant, reimbursement of the costs the employee incurs when moving to another workplace (in case of a relocation of business) or compensation for employees incurring higher travel expenses when coming in for work. As a rule of thumb, compensation for termination of employment is calculated by reference to a 'factor', which results in a compensation amount – depending on the age of the employee – equivalent to between one half of a monthly salary (gross) and three monthly gross salaries (gross) per year of service. In this context, a recent court order of the BAG confirmed the decision of the conciliation board to grant the employees affected by restructuring measures a social plan whose total costs equalled the amount of money the employer expected to save within the next two years by contemplating the restructuring. This ruling should be considered when evaluating the benefit of continuing to negotiate with the works council in comparison to entering into a conciliation board procedure.

## Social Security

Under German law, each employee is, in principle, insured by law in the statutory health, accident and pension, long-term care and unemployment insurance systems. The accident insurance is financed by the employer alone. For the rest, social security contributions are paid shared equally by the employer and the employee. However, the employer is liable for paying the total social security contributions to the competent health insurance fund as the collecting agency. He may therefore deduct the employee's share from his/her monthly salary. The exact amount of the social security contributions depends on the gross income of the individual employee, with the maximum salary subject to contributions in 2008 being

€3,600 (health insurance, long-term care insurance) and €5,300 (pension insurance, unemployment insurance), respectively. The total social security rate in Germany is round about 40 percent (in 2008: 3.3 percent for unemployment insurance, 19.9 percent for pension insurance, an average of 14.8 percent for health insurance, 1.7 percent (insured employee with children) and 1.95 percent (insured employee without children), respectively, for long-term care insurance).

## Conclusion

In conclusion, it can be said that despite the increasing European influence on domestic legislation, German employment law provides for a number of peculiarities which differ from employment practices in Ireland and other European countries. Nevertheless, on the basis of appropriate and timely advice, German employment law allows an employer who makes use of the statutory alternatives more latitude than is generally expected.

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