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## Significant Revisions to the German Civil Code Affect Contracts of U.S. and Other Companies

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Amendments to the German Civil Code which came into effect on January 1, 2002 implemented the most significant changes in German business law in 100 years. These changes will affect the ways in which U.S. and other companies buy and sell goods and services to German companies, both online and through more traditional channels. These changes also affect employment contracts between U.S. and other companies with their German employees.

As a result of those changes:

- Standard types of agreements (e.g., license or distribution agreements, general terms and conditions of purchase or sale) used by companies may have to be updated in order to conform to the revised statutory provisions.
- Existing contracts requiring continuing performance (e.g., employment, credit or lease agreements, as well as master service or supply agreements) must be amended to conform to the new legislation by no later than December 31, 2002.
- The statutory interest rate that may be charged with respect to a defaulting party has been increased considerably.
- Companies engaged in e-commerce must make certain changes in the way they offer their goods and services online.

The Amendments, [Sections 194 through 218 and Sections 241 through 853](#), (the "Amendments") are currently available only in German. The German Federal Ministry of Justice will make an English version available later this year. If you are interested in the English text, please contact [Dr. Christian Breuer](#) or [Peter Kremer](#), who will forward that text to you when it becomes available.

We have briefly outlined below several of the significant changes effected by the Amendments:

### **1. Contractual Warranty**

#### **Right to "cure" breaches of warranty adopted**

Previously, German law provided no right to "cure" a breach of warranty. Statutory provisions discussed only a buyer's right to rescind or receive a reduction in the purchase price. As a result,

most parties included provisions in their standard terms and conditions creating a contractual right of cure.

The right of cure has now been expressly recognized in the Civil Code. The defaulting party must now be given an adequate period of time to cure a warranty default. Only if the default is not cured in a timely manner is the injured party entitled to exercise other warranty rights (e.g., seeking damages, a reduction of the price or rescission of the agreement).

### **Extension of warranty periods**

The statutory warranty period, which applies when the contract itself does not specify a different warranty period, was extended to two years, compared to six months under the former law. There are certain legal restrictions with regard to shortening this period by mutual agreement and by means of General Terms and Conditions.

### **Reminder Notices**

As was the case before the Amendments, an invoice that is unpaid 30 days after receipt is automatically in default, without the necessity of a reminder notice. However, an invoice addressed to individual consumers must now notify the consumer that the invoice will be in automatic default if not paid within 30 days.

### **Increase of statutory interest rate for default**

The statutory interest rate payable by defaulting individual consumers has been raised to 5% above the so-called “basic interest rate,” which is set from time to time by the [German Central Bank](#). (currently 2.57%), or 7.57%. In all other cases (i.e., commercial contracts), the statutory interest rate has been raised to 8% above the basic interest rate, or 10.57%. This interest rate may be varied by the express agreement of the parties in any specific contract, but may not be varied in a general manner, for example by a company's General Terms and Conditions.

### **Reversal of burden of proof**

The Amendments did not alter the liability of a defaulting party who has intentionally or negligently breached an obligation. However, the Amendments now require that the defaulting party prove that the breach was not due to an intentional or negligent action of its side, whereas previously the burden of proof was on the non-defaulting party.

## **2. Statute of Limitations**

The Amendments have altered many of the applicable limitations periods. In most cases, a 3-year statute of limitations will apply, commencing at the end of the calendar year in which the non-defaulting party becomes aware of the circumstances giving rise to a claim.

## **3. E-commerce**

The Amendments have introduced detailed new statutory obligations concerning electronic commerce that will affect the way e-commerce companies do business with consumers. For

example, an individual consumer has a right to rescind an electronic agreement within the first 2 weeks. If the consumer is not specifically informed of this rescission right, then the right of rescission is extended to 6 months. On this point, the Amendments are implementing the European Union's Distance Sales Directive. For a discussion of the EU's Distance Sales Directive and its other Internet directives on e-commerce, see our [March 14, 2000](#) and [August 10, 2000](#) Internet Alerts.

#### **4. Employment law**

As a result of the Amendments, employment agreements are now subject to the stringent provisions of [Sec. 305 et seq. of the German Civil Code](#) (formerly the law on General Terms and Conditions). These general terms and conditions may now override provisions contained in existing employment agreements.

#### **Conclusion**

This is only a brief summary of several of the numerous important changes effected by the Amendments. For companies doing business in Germany, it is likely that these changes in the Civil Code will require changes in their existing contracts and business practices. While contracts requiring continuing performance must be amended by December 31, 2002 in order to comply with the Amendments, a company's other contracts and practices should be amended even earlier if that company wants to minimize any adverse effects of the Amendments on its business.