

# FOREIGN ENFORCEMENT OF AFMA ARBITRATION AWARDS ("Germany") January 2004

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### **1. Is it better to take the AFMA Arbitration award or an American court judgment to the country for enforcement?**

In principle, it is better to take an AFMA Arbitration award to Germany for enforcement than an American judgement. It should be possible to enforce the award on the basis of Articles 1061 et seq. of the German Code of Civil Procedure and the UN Convention on International Commercial Arbitration of 1958 (New York Convention), of which both countries are Member States. In the case of American court judgements the enforcement is more difficult, because there is no international treaty or bi-lateral agreement applicable in the case of the recognition and enforcement of most commercial judgements.

In the case in which a New York court had granted the exequatur to an award which declared the award as enforceable and which contained a judgement, the German Supreme Court gave the creditor the choice whether he wanted to enforce the judgement or the award.<sup>1</sup> Thus depending on the circumstances it may be reasonable to ask for the exequatur of an award in order to obtain two possibilities for the enforcement of a claim.

Access to the German Court system is granted to US citizens in application of the Treaty on Friendship, Commerce and Navigation Between the US and Germany of 1954, Article VI(1). In Article VI(2) this Treaty contains also rules on the enforceability of awards.

### **2. What are the steps for confirmation of the award or judgment?**

The rules for the confirmation of the award or judgment are contained in the German Code of Civil Procedure. The Code refers to the New York Convention insofar as foreign arbitral awards are concerned. Additionally, there are provisions contained in Article VI of the Treaty of Friendship, Commerce and Navigation Between the United States of America and the Federal Republic of Germany.<sup>2</sup>

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<sup>1</sup> German Federal Supreme Court of 10 May 1984, RIW 1984 at 644, 645; Jens Peter LACHMANN: "Handbuch für die Schiedsgerichtspraxis", 2<sup>nd</sup> ed., Otto Schmidt, Cologne 2002, p. 441.

<sup>2</sup> Treaty on Friendship, Commerce and Navigation Between the United States of America and the Federal Republic of Germany of 29 October 1954, ratified by the President of the USA on 30 April 1956; proclaimed by the President of the USA on 26 June 1956; entered into on 14 July 1956; in force in Germany since 1956, BGBl. (Official Journal) 1956 II 488; Article VI

(2) Nationals and companies of either Party shall be accorded national treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. It is

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### 2.1. Confirmation of the award

The confirmation of an international award has to be made in application of Article 1061 of the German Code of Civil Procedure and the New York Convention.

Occasionally, the provisions of the German Code of Civil Procedure are less formal than those of the New York Convention. If both sets of rules overlap, the less formal rules of the German Code will prevail.<sup>3</sup>

Article 1061 of the Code states:

Article 1061 German Code of Civil Procedure - Foreign Awards

(1) The recognition and enforcement of foreign awards is made of the basis of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (Federal Gazette 1961 II p. 121). The provisions contained in other international agreements on the recognition and enforcement of awards are not affected.

(2) If a declaration on the enforceability has to be refused, the court orders that the award cannot be recognised within the (national) territory.

(3) If the award, after it had been declared to be enforceable, was set aside abroad, the annulment of the declaration on the enforceability may be applied for.

#### 2.1.1. AFMA Arbitration award

The application for the recognition and enforcement of an AFMA Arbitration award can be made in application of Article 1061 of the German Code of Civil Procedure provided that the AFMA award qualifies as a foreign award in the sense of the New York Convention of 1958. Generally, an AFMA Arbitration award will have this qualification.

#### 2.1.2. Authentication

According to Article IV(1) of the New York Convention of 1958 the application for the recognition and enforcement of the award should be supplemented by:

- the duly authenticated original award or a duly certified copy thereof;
- the original arbitration agreement or a duly certified copy thereof.

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understood that companies of either Party not engaged in activities within the territories of the other Party shall enjoy such access therein without any requirement of registration or domestication.

(2) Contracts entered into between nationals or companies of either Party and nationals or companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories or such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. Awards duly rendered pursuant to any such contracts, which are final and enforceable under the laws of the place where rendered, shall be deemed conclusive in enforcement proceedings brought before the courts of competent jurisdiction of either Party, and shall be entitled to be declared enforceable by such courts, except where found contrary to public policy. When so declared, such awards shall be entitled to privileges and measures of enforcement appertaining to awards rendered locally. It is understood, however, that awards rendered outside the United States of America shall be entitled in any court in any State thereof only to the same measure of recognition as awards rendered in other States thereof.

<sup>3</sup> Bavarian Supreme Court 2000/233; BAUMBACH/LAUTERBACH/ALBERS/HARTMANN: "Zivilprozeßordnung", 62<sup>nd</sup> ed., C.H. Beck, Munich 2004, No. 3 to Article 1061; THOMAS/PUTZO: "Zivilprozeßordnung", 25<sup>th</sup> ed., C.H. Beck, Munich 2003, No. 7 to Article 1064.

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In principle, the authentication and certification have to be compatible with the legal order applicable in the state where the recognition and enforcement are sought and this is why the German consul in the country concerned (US, California) will be competent.<sup>4</sup> Article 1064(1) of the German Code of Civil Procedure modifies some of the formal requirements. For this reason it is not necessary to attach the arbitration agreement or a duly certified copy thereof, the duly authenticated original or a certified copy of the award will suffice.<sup>5</sup>

### 2.1.3. Certification

Who may certify the copies? A certification by the lawyer who represents the applicant's interests before the court will be sufficient, Article 1064(1) sentence 2 of the German Code of Civil Procedure. But a lawyer who does not represent the client may not certify. In such a case there should be a publicly certified document in application of Article 129 of the German Civil Code.<sup>6</sup>

### 2.1.4. Translation

If the award or the arbitration agreement was not made in the German language the applicant has to provide a translation of these documents into the German language, certified by an official or sworn translator or by a diplomatic or consular agent according to Article IV(2) of the New York Convention of 1958. If the translation is made by a translator he should have the necessary qualities applicable in Germany, that is to say he should be sworn at a German court.

### 2.1.5. Competent German court

The application for the recognition and enforcement has to be made with the competent court. This is the Court of Appeal ("Oberlandesgericht") in application of Article 1062 of the German Code of Civil Procedure. The territorial competence is also regulated by this provision:

Article 1062 German Code of Civil Procedure - Competencies

(1) The court of appeal which is referred to in the arbitration agreement or, if there is no such reference, the court of appeal at the place of the arbitration, is competent to decide on applications for:

1. (...)

4. the (...) declaration on the enforceability of the award (Articles 1060 et seq.) or the annulment of the declaration on enforceability (Article 1061).

(2) If there is no German place of arbitration (...) the court of appeal is competent, in the territory of which the defendant has his seat or place of residence or in the territory of which the defendant has property (assets) or in the territory of which property (assets) is (are) situated which is (are) the subject matter of the claim or the measure applied for, subsidiarily, the Court of Appeal of Berlin.

Accordingly, there are the following alternatives for the court where the application has to be filed:

First, if the arbitration agreement contains a reference to a relevant court of appeal in Germany, this court will be competent;

Second, if there is no such reference, the court of appeal at the place of the arbitration will be competent;

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<sup>4</sup> German Act on Consulates, Article 13.

<sup>5</sup> SCHWAB/WALTER: "Schiedsgerichtsbarkeit", 6<sup>th</sup> ed., C.H. Beck, Munich 2000, p. 321, note 79.

<sup>6</sup> STEIN/JONAS: "Kommentar zur Zivilprozessordnung", 22<sup>nd</sup> ed., vol. 9, Mohr Siebeck, Tübingen 2002, No. 2 to Article 1064.

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Third, if there is no German place of arbitration, the court of appeal is competent in the territory of which the defendant has his seat or place of residence, where he has property or assets or where the subject-matter of the claim or measure applied for are situated (the applicant has a choice between these alternatives);

Fourth, and subsidiarily, the Court of Appeal of Berlin ("Kammergericht").

### 2.1.6. Application form

A basic form for the application (translated into the English language):

*To the Court of Appeal ...*

*date, applicant's reference*

*Application for the Declaration on the Recognition and Enforcement of a Foreign Award*

*In the matter of*

*the ABC Company  
- applicant -  
represented by the lawyers ...*

*against*

*the XYZ Company  
- defendant -  
represented by the lawyers ...*

*Value of the claim: EUR ...*

*We represent the interests of the applicant ... . On behalf of the applicant it is requested:*

- 1. to recognise and declare as enforceable the foreign arbitral award issued by the AFMA Arbitration (American Film Marketing Association ...) in Los Angeles, by the arbitrator ..., issued on ... (date), and in which the defendant was ordered to make a payment to the plaintiff of EUR ... with ... % interests since ...;*
- 2. to order that the defendant has to pay the costs;*
- 3. to declare that the decision is provisionally enforceable.*

*Reasons:*

*The parties concluded a film distribution contract on ... . The contract contains an arbitration clause according to which the AFMA Arbitration should settle any disputes which may arise from the contract.*

*Offer of evidence: 1. witness ... 2. the copy of the contract including the arbitration clause.*

*The defendant did not perform his contractual obligations. The plaintiff instituted arbitration proceedings with AFMA Arbitration. The arbitration proceedings resulted in the arbitral award referred to in claim 1 above.*

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*Offer of evidence: the authenticated arbitral award in a duly certified copy.*

*The award is final and enforceable according to Californian law.*

*The requirements of the New York Convention of 1958, which is applicable in the case of an enforcement of an arbitral award between the US and Germany, are fulfilled.*

*(signature)*  
*Attorney*

## **2.1.7. Procedure**

Upon the application, the court will render its decision by an order which may be made on the basis of written proceedings in which the defendant has to be heard, Article 1063 of the German Code of Civil Procedure. The court shall order a hearing if the defendant applies for the setting aside or suspension of the award or if there are reasons according to which the award may be suspended, Article 1063(2) of the German Code of Civil Procedure.

## **2.1.8. Decision on enforceability and provisional enforceability**

The court will make an order on the enforceability including the provisional enforceability of the award in application of Article 1064(2) of the German Code of Civil Procedure. The order will be enforceable after the lapse of the period in which an appeal against the order can be filed, or if the appeal is rejected or withdrawn.<sup>7</sup>

## **2.1.9. Conclusions**

Summing up, the following steps are recommended in order to obtain a court's decision in Germany on the recognition and enforceability of an award issued by AFMA Arbitration:

- authentication of the AFMA Arbitration award by the German consul in California;
- translation by a translator sworn at a German court;
- certification of the copies of the authenticated AFMA Arbitration award and the translations by the applicant's German lawyer;
- application for the recognition of the enforcement of the award through the applicant's German lawyer to the competent German court of appeal.

## **2.2. Confirmation of the judgment**

A US judgment can be enforced in Germany after a German court has rendered a judgment on the enforceability of the foreign judgment, Article 722(1) of the German Code of Civil Procedure.

### **2.2.1. Lawsuit on the enforceability of the US judgment**

This means that the plaintiff has to bring a lawsuit before the competent court which decides on the issue of the enforceability. The court at the defendant's place of general jurisdiction is competent, Article 722(2) of the German Code of Civil Procedure. This is generally the place of residence, or, if there is no such place, the place where the defendant's property is situated or the subject-matter of the claims of the original lawsuit, Articles 23 to 19 and 23 of the German Civil Code. The lawsuit is well founded if the original judgment has legal force, Article 723 of the German Code of Civil Procedure, and if there are no objections to the enforceability, Article 328 of the German Code of Civil Procedure.

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<sup>7</sup> STEIN/JONAS: "Kommentar zur Zivilprozessordnung", vol. 9, 22<sup>nd</sup> ed., Mohr Siebeck, Tübingen 2002, No. 3 to Article 1064.

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## 2.2.2. Form for a statement of claims

A basic form for the statement of claims of the lawsuit (translated into the English language):

*To the District court of ...*

*Date, plaintiff's reference*

*Lawsuit*

*Company ABC  
- plaintiff -  
represented by the lawyers ...*

*against*

*Company XYZ  
- defendant -  
represented by the lawyers ...*

*concern: declaration on the enforceability of a foreign judgment*

*value of the claim: EUR ...*

*We represent the interests of the plaintiff. The plaintiff claims:*

- 1. the judgment of the ... court in California, US, of ..., reference no.: ..., by means of which the defendant was sentenced to make the payment of USD ... and ...% interests payable since ... is declared to be enforceable;*
- 2. supplementarily, the defendant is sentenced to make a payment to the defendant of USD ... (EUR) ... and ...% payable since ... .*
- 3. the defendant is ordered to pay costs;*
- 4. the judgment is declared to be provisionally enforceable;*
- 5. supplementarily, in the case of a defeat, the plaintiff is granted the right to ward off the execution through security by bond of the bank ...*

*Reasons:*

*The defendant owes the plaintiff USD ... as a contractual royalty. The plaintiff brought a lawsuit before the US court ... which rendered a judgment on ... in which the defendant was sentenced to pay to the plaintiff USD ... and ...% interest since ... . The judgment has legal force.*

*Offer of evidence: the attached certified copy of the authenticated judgment of the US court ... of ... with the notice of formal validity.*

*The requirements of the recognition according to Article 328(1) of the German Court of Civil Procedure are met so that the declaration on the enforceability according to Article 722 et seq. of the German Court of Civil Procedure can be made without any further examination.*

*In particular, the following requirements are fulfilled:*

*The US court was internationally competent, because the defendant has its seat in the territory of the court.*

*Offer of evidence: the attached certified copy of the trade register of ..., file no. ....*

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*The defendant accepted the jurisdiction of the US court, because he brought a defence to the action, so that it is irrelevant whether he was served the statement of claims.*

*Offer of evidence: the attached certified copy of the protocol of the hearing before the US court ... of ...*

*The plaintiff's procedural rights were observed, and the judgment does not conflict with German public policy.*

*The reciprocity is ensured, since judgments rendered by German courts can be enforced in the US.*

*Offer of evidence: expert opinion, with reservation of costs, Article 293 of the German Code of Civil Procedure.*

*Should the Court nevertheless consider that the claim No. 1. for the declaration of enforceability of the judgment, which was rendered by the US court, is unsound, the plaintiff asserts the claim No. 2. supplementarily.*

### 3. Potential obstacles to confirmation

Obstacles to confirmation may be differentiated with regard to awards and judgments.

#### 3.1. Awards

The potential obstacles to confirmation are those obstacles which are referred to by the New York Convention of 1958. These are, typically, those mentioned in Article V of the Convention

##### 3.1.1. Article V of the New York Convention

Article V of the New York Convention

(1) Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

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(2) Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Accordingly, there are some typical groups of circumstances which may give rise to obstacles to confirmation, namely:

- (a) incapacity of the parties or invalidity of the arbitration agreement;
- (b) lack of notice of the appointment of the arbitrator, violation of the right to be heard;
- (c) award dealing with subject-matter not contemplated by the arbitration agreement;
- (d) wrong composition of the arbitral authority or arbitral procedure;
- (e) award not yet binding or set aside or suspended in the country where it was made;

Additionally there are obstacles to confirmation if the award is not compatible with the German law, namely if:

- (a) the subject-matter of dispute cannot be subjected to arbitration in Germany;
- (b) the recognition or enforcement would be contrary to the public policy in Germany.

### 3.1.2. Consideration of obstacles by German courts

The objections mentioned in Article V(1) of the New York Convention have to be pleaded by the debtor whereas those mentioned in Article V(2) of the Convention can be considered ex officio by the German court.

Typical controversies which may arise before a German court could relate to the question whether excessive or punitive damages (for example treble damages) are compatible with German public policy. According to the German jurisprudence<sup>8</sup> an award is contrary to the German public policy if it violates a legal provision which regulates the basic elements of the public or economic life or which is in an intolerable conflict with the German convictions on justice.

In the case of copyright disputes which involve authors it could possibly be argued that German law protects the author as a weaker party, similar to workers or consumers and that, accordingly, a dispute which involves authors as parties could not be subjected to arbitration. It may also be argued that an award which violates rules, which protect the author as a weaker party, is contrary to the public policy, insofar as these rules are not merely rules of mandatory German law but have become public policy.

### 3.2. Judgments

The obstacles to the confirmation of a judgment are referred to by Article 328 of the German Code of Civil Procedure. This provision states:

Article 328 – Recognition of foreign judgments

- (1) The recognition of the judgment of a foreign court is excluded if:
  - 1. the courts of the state in which the foreign court is situated, are not competent according to the German laws;
  - 2. the defendant, who did not defend himself against the action and who relies on this fact, was not served the statement of claims properly or within time so that he could not defend himself;

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<sup>8</sup> See German Federal Supreme Court NJW-RR 1991/757; NJW 1980/527; NJW 1978/1114; NJW 1968/354; 1963/1200.

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3. the judgment is incompatible with an earlier judgment rendered in this country (Germany) or with an earlier foreign judgment which has to be recognised or if the proceedings on which the judgment is based are not compatible with earlier proceedings which were pending between the parties;
  4. the recognition of the foreign judgment would lead to a result which is obviously incompatible with essential principles of the German law, in particular if the recognition is incompatible with the basic human rights;
  5. if the reciprocity of the recognition of judgments is not warranted.
- (2) The provision of para. (1) No. 5 does not preclude the recognition of a judgment, if the judgment concerns a claim with a non-proprietary content ...

Since there is no bi-lateral treaty or international legal instrument in force between the US and Germany on the recognition and enforcement of judgments. Accordingly, the recognition of a judgment which was rendered in the US is made in Germany on the basis of German national law. This means that the recognition can be made if the requirements of Article 328 of the German Code of Civil Procedure are fulfilled.

Article 328(1) No. 1. of the Code involves the determination whether the US court had jurisdiction. This requirement is fulfilled if, in application of the German law, any US court would have had jurisdiction. This may be the case, for example, if the defendant's place of residence was in the US. Article 328(1) No. 2. of the Code is particularly applicable in the case of judgments by default. The statement of claims and the notice of hearing must have been served on the defendant in personam. Article 328(1) No. 3 of the Code concerns cases of conflicts between an earlier German court decision and the subsequent judgment rendered in the US. Article 328(1) No. 4 of the Code excludes from the recognition all judgments which are incompatible with the German public policy and Article 328(1) No. 5. of the Code requires that the recognition of a judgment rendered by a German court in the US should not face more obstacles than the recognition of the US judgment in Germany.

## 4. Confirmed award appealable

Against the declaration by a German court on the enforceability of an award a remedy can be brought, which relates to the competence of the court. This remedy is an appeal against on points of law, Articles 1065 and 1062 of the German Code of Civil Procedure. With regard to other aspects, the decision cannot be appealed against.

Based on Article 1061(3) of the German Code of Civil Procedure<sup>9</sup> a decision by a German court on the enforceability of an award can be annulled, if the award was set aside in the country of origin of the award.<sup>10</sup> The order on the annulment of the decision has to be applied for to the competent court. Article 1062(1) No. 4 of the German Civil Code establishes the competent court.<sup>11</sup>

## 5. Steps to collecting on the confirmed award

In Germany, the steps which may be undertaken towards the collecting on a confirmed award are based on the Code of Civil Procedure.

### 5.1. General requirements for collection

There are several requirements which have to be fulfilled before an enforcement can be made.

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<sup>9</sup> See above.

<sup>10</sup> See SCHWAB/WALTER: "Schiedsgerichtsbarkeit", 6<sup>th</sup> ed., C.H. Beck, Munich 2000, p. 323.

<sup>11</sup> See above.

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## 5.1.1. Executory title

First, there must be an executory title. In the case of an AFMA Arbitration award this will be the award which has legal force or is preliminarily executable, Article 794(1) No. 4a) of the German Code of Civil Procedure, and which has been declared enforceable by a decision of a German court of appeal according to Article 1061 et seq. of the Code. (In the case of a judgment there must be a judgment by a German court on the enforceability of a foreign judgement, Article 723 of the German Code of Civil Procedure.)

## 5.1.2. Parties, content of the enforcement and its scope

Second, the parties, the content of the enforcement and its scope must emanate from the executory title. For example,<sup>12</sup> a claim for money must be determinate and interests must be indicated according to the rate and the period of time.

## 5.1.3. Enforceable content

Third, the executory title must have an enforceable content which will be the case, for example, if the debtor has to make the payment of money.

## 5.1.4. Interpretation of the executory title

Fourth, the executory title has to be interpreted by the bodies involved with the execution according to the general principles; this means that the content of the title must be decisive; other circumstances may not be taken into consideration.

## 5.1.5. Service on debtor

Fifth, the executory title has to be served effectively on the debtor, Article 166 et seq., Articles 750, 794(1) No. 4a), 795 of the German Code of Civil Procedure.

## 5.2. Typical measures of collection

There are different possibilities for the execution of an award or a judgment.

### 5.2.1. Charging a bailiff

The bailiff ("Gerichtsvollzieher") is the person who performs the execution unless the enforcement is attributed to the courts, Article 154 of the German Law on the Constitution of Courts and Article 753 of the German Code of Civil Procedure. Bailiffs are organised at the magistrates courts. Therefore the first request for the execution of an enforceable title has to be directed to a magistrates court's center for the allocation of requests to bailiffs ("Gerichtsvollziehverteilungsstelle").

The most common procedure consists in mandating a bailiff to ask the debtor for the payment and to search the debtor's home, Articles 754 and 758 of the German Court of Civil Procedure. If the debtor is not at home or unwilling to pay, the bailiff may, on the creditor's request, seize and pledge the debtor's property and auction it, or he may force the debtor to declare an oath on his insolvency.

### 5.2.2. Suing out a decree of seizure and assignment

The creditor may sue out a decree of seizure and assignment, for example if the debtor has a bank account, Article 829 of the German Court of Civil Procedure. Such a suit has to be brought before

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<sup>12</sup> See, for example, German Federal Supreme Court NJW 1996/2165.

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the competent magistrate's court, Article 764 of the German Code of Civil Procedure, and the decree can then be served on the bank and executed.

## **5.3. Regulation of measures aiming at collection**

The German Code of Civil Procedure regulates the measures available for collection.

### **5.3.1. Execution in the moveable property**

The execution based on claims of money is regulated in Articles 803 to 863 of the German Code of Civil Procedure. These provisions contain:

- general provisions (Articles 803 to 807);
- rules on the execution in corporeal property (Articles 808 to 827);
- rules on the execution in claims and other proprietary assets (Articles 828 to 863).

### **5.3.2. Execution in the immoveable property**

Articles 864 to 871 of the German Code of Civil Procedure contain provisions on the execution in a debtor's immoveable property, in particular his land.

### **5.3.3. Oath of an insolvent debtor**

The German Code of Civil Procedure contain rules on the insolvent debtor's oath, Articles 899 to 915h.

### **5.3.4. Civil arrest proceedings**

Articles 916 to 945 of the German Code of Civil Procedure concern the civil arrest proceedings.

### **5.3.5. Delivery of moveable property**

Articles 883 to 898 of the German Code of Civil Procedure concern the execution aiming at the delivery of moveable property.

## **5.4. Competent court**

Article 764 of the Code concerns the competent court of enforcement. In principle this is the magistrates court in the territory in which the execution shall take place or has taken place, Article 764(2) of the Code.

## **6. Potential obstacles to collection**

Potential obstacles to collection may concern the method of the execution or material objections against the execution of the title. In the first case the appropriate remedy against the collection will be the proceedings for a complaint, in the second case the legal proceedings against the execution of the title.

### **6.1. Complaint**

If the bailiff did not observe the rules applicable to the enforcement of executory titles or if a decision which is not a decision by a court shall be appealed against, the claimant may institute proceedings for a complaint on the basis of Article 766 of the German Code of Civil Procedure.

### **6.2. Lawsuit against the execution of the title**

If the debtor can bring arguments against the claim based on the award or judgment which was confirmed in the executory title, for example that the debtor has made a payment after the award

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was issued or the judgment rendered, he may institute legal proceedings against the execution of the title on the basis of Article 767 of the German Code of Civil Procedure.

### 7. Law firms that handle confirmation of judgment and collection matters

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### 8. Additional information

General information on case law relating to the recognition and enforceability of arbitral awards on the basis of the New York Convention of 1958 with particular reference to the UNICTRAL Model Law on International Commercial Arbitration can be found on the UNCITRAL's website: <http://www.uncitral.org/english/clout/MAL-thesauros/>

General information on the recognition and enforcement of US judgments abroad may be obtained at the US government's website: [http://travel.state.gov/enforcement\\_of\\_judgments.html](http://travel.state.gov/enforcement_of_judgments.html) and see also the website of the Office of the Chief Counsel for International Commerce: <http://www.osec.doc.gov/ogc/occic/refmj.htm>

General information on the German legal system can be obtained from the German Consulate General, Los Angeles: <http://www.germany-info.org/relaunch/info/missions/consulates/losangeles/losangeles.html>

For a study on arbitration in e-commerce (out-of-court dispute settlement systems for electronic commerce) see: <http://www.vahrenwald.com/doc/part4.pdf>