



Bull and Bear sculptures outside Frankfurt Stock Exchange, Germany

Negotiating in Germany

Conducting cross-border transactions for lawyers is never easy at the best of times. Even though all the relevant law may be in place for the contracts, the deal may still fall down because of a foolish *faux-pas* when culture and traditions are misinterpreted. In this first of a series of country-specific articles for lawyers, international negotiation specialist **Sergey Frank** details the correct protocol when involved with deals in Germany.

Germany plays a vital role as the largest country in the European Union as well as its biggest market place. Its economy is the world's third largest, behind only the U.S. and Japan, and accounts for approximately 25 per cent of the EU's GDP. Germany has a long tradition of export driven business but over the years has also become an increasingly interesting market for investment.

Many regional differences exist influencing dialects, language, mentality and also business behaviour. Keeping this variety in mind, this article will describe the most important general tendencies in business behaviour irrespective of whether the location is Berlin, Frankfurt, Hamburg or Munich. The legal market in Germany has undergone a considerable concentration process in the past few years, establishing several big law firms, at least by German standards.

In business situations, Germans shake hands firmly at the beginning and at the end of the meeting. The communication is quite direct. German managers generally tend to speak their mind. The clarity of the subject matter has a high priority. Negotiators in Germany are prone to get to the point quickly. As an indication, be prepared for them to answer the telephone by giving their last name rather than saying 'hello'. Titles are important. Hence, it is recommended to address people by their full, correct title in correspondence. Unlike the Anglo-American tradition of using first names, most Germans expect to be addressed as Mr. or Mrs. followed by his/her surname. German language contains two different personal pronouns for "you". "Sie" is the official pronoun appropriate for any formal relationship while the informal "Du" is reserved for close personal friends, the family and minors. However, due to an increasing tendency of using Americanisms, especially in business negotiations when English is the spoken language, such negotiations are frequently conducted on a first name basis, but without the automatically intimate implication of "Du" for the German language. If communication switches from English to German, it is advisable to stay on a first name basis but at the same time to retain the formal "Sie" to address the

German partner. Different manners may apply for the new generation of business people in start-up companies, for example within e-commerce. They are usually very relaxed and talk on a first name basis, even in German.

The negotiating pattern of German business people and attorneys is often systematic and very well prepared, which helps to establish and maintain an efficient communication process. This is quite a positive aspect, taking into consideration the frequent complexity of the negotiating subject as well as given deadlines etc. However you may occasionally also find attorneys and business partners who are rather dogmatic and fond of "doing everything by the book". In such a case it takes considerable effort to persuade the other side to agree upon unexpected and unforeseen solutions. It is recommended to make a thorough and detailed presentation. The emphasis is on objective information, i.e. on the company's and/or project's history and on background information rather than on fancy visuals with a lot of marketing gadgets. A list of references may also be very helpful. Unlike in some other countries, for example the U.S., humour is not necessarily such a critical element during a presentation and should be used carefully. Enthusiastic attitudes or compliments which, for example, are one of the characteristics of communication in Latin Europe and Latin America, are very rarely used in business Germany. Time and punctuality are very important – lateness may be interpreted as unreliability. In case of delays, one should always inform the counterpart and possibly reschedule the meeting.

Start the negotiation well prepared and be sure to put your perspective and position across clearly during the opening stage, as well as during the exploration phases of your business negotiation. Avoid interruptions during presentations unless you have an urgent question concerning the information presented. German negotiators frequently do not like too much bargaining, which they regard as frivolous. Initial offers should be realistic. Here it is important to legitimise your bids with comparative market prices. The offer should have a considerable margin built in to cover unexpected developments and some

room for concessions, but one should avoid over-inflating the initial offer.

The follow-up to a business negotiation is frequently conducted over the telephone. While important negotiations are conducted face-to-face, one should expect many follow-up calls, emails or telefaxes thereafter to finalise the agreement. In Germany, business people tend to discuss the project internally with colleagues and supervisors before reaching an important decision. Once the decision has been taken the implementation of the project is usually done comprehensively and reasonably quickly. The contractual agreement resulting from the negotiation, including all legal aspects and definitions, is very important. Do not forget that in several legal fields the German legal approach, contrary to the UK, is based rather on statutes provided by the law than primarily on case law. In addition, the other side will tend to depend more on the wording of the contract than on the personal relationship with his business partner in order to solve problems and disagreements which may occur in the course of the contract.

In Germany attorneys and business people tend to guard their private lives quite strongly, so do not phone an executive at home without prior permission to do so. However, this tendency is changing through an increasing number of new generation e-commerce and start-up companies where young professionals, much like in the U.S., regard their professional life and achievement as more important than their privacy. Many German attorneys are quite comfortable with English and also very much prepared to conduct business in English. Taking the above aspects into consideration, especially the direct communication and the tendency to make the subject matter of the negotiation clear, you will face fewer principal communication difficulties in Germany than is often the case in many other countries. This is very valuable, as time is of the essence. ■

Sergey Frank is a German trained lawyer, a partner of Kienbaum Executive Consultants, and managing director of the London offices of the Kienbaum Group. He is an author and speaker on international communication issues.
www.kienbaum.co.uk