



TaylorWessing

## **Session #3**

# **Hiring in Germany**

What foreign companies need to know when employing staff in Germany from an employment and immigration law perspective

27.4.2022 | Christian Maron, Jonas Warnken

# Introduction and overview

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- 2 Hiring Options
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# Introduction General Overview

- German Employment Law is complex and subject to various statutory regulations which usually are widely unknown to foreign companies planning to hire staff in Germany.
- As German Employment Law is said to be largely focused on “employee protection law”, it is crucial for foreign companies to be familiar with some basic issues.



# Hiring options (corporate setup)



## Foreign entity + local payroll

Easiest option when starting business in Germany; best way to grow steadily and maintaining full control over workforce



## Local German entity (German GmbH)

Right approach if significant business in Germany takes place from the beginning



## PEO/EOR

Only option to think about if very quick and short-term market assessment is required

# Hiring Options (employees vs freelancers)

- Freelancers/Independent contractors can be an attractive option compared to a dependent employee, as long as they are indeed genuine independent.
- Overall characterization of relationship decisive.
- Various consequences in case of misclassification:
  - Individual: acquires employment law rights (especially protection against unfair dismissal).
  - Employer: responsible for deduction of income tax and social security contributions, also retroactively.
  - The non-payment of social security contributions could qualify as an administrative offence and (theoretically) even as a criminal offence according to the German Criminal Code.



# Hiring Procedures + Immigration Aspects

## Job advertising

- Be aware of the German Equal Treatment Act
- List only criteria that are necessary for the position and are not discriminatory
- Gender neutrality

## Job interview

- CV/Reference still usual
- Interview: which questions are permitted / are off-limits
  - Job related questions vs. protected general right of privacy
  - No questions which could be discriminatory
  - Obligation to disclose certain information?
- Employee's right of secret and lies regarding forbidden questions
- Discrimination issues



# Hiring Procedures + Immigration Aspects

## Work from anywhere/remote working

- Home Office or Remote Work
- Have a written agreement or policy in place
- Be aware of employment, tax and social security consequences when working in another country

## Does the candidate require a special work permit?

- EU and EEA citizens do not require a work permit
- Citizens of a number of countries, including the USA and Canada, are privileged and can enter the country visa-free. However, to be able to work a permit might be required.

## Is the current work permit suitable for the envisaged work?

- Work permits issued for other employers might need to be transferred

## Can employees holding a work permit work anywhere in the EU?



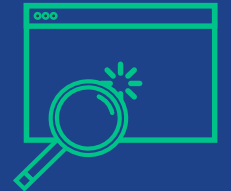
## Hiring Procedures (2)

### Background Checks



- Typical to ask employees to provide reference letters from former employers.
- Criminal and credit checks unusual and data protection rules need to be observed.

### Background Checks Online (Facebook, Xing, LinkedIn)



- Difference between networks for jobs (LinkedIn and Xing) and networks for private use (Facebook, Google+).
- Obtaining data from Facebook etc in general not allowed.
- Only data from job networks may be used to check the applicant.



# Offer Letter vs Employment Agreement

- Each employee has a right to and will expect a written summary of the main terms and conditions of employment rather than a simple letter offering employment which might be more typically expected, for example, in the US.
  - Offer letter
  - Issuing date
  - Formal requirement for some clauses (e.g. limitation of the duration of an employment relationship; post-contractual non-compete).
- Written contract has the advantage of making it possible to include certain provisions into the agreement, especially with respect to IP rights, confidentiality, and non-competition covenants.
- Irrespective of what the parties may agree upon in the employment contract, however, German law imposes a number of obligations and rights which may override unlawful contractual agreements.



# Statutory minimum rights



**Working time**



**Minimum Wage**



**Notice Periods**



**Vacation**



**Sick leave**

# Statutory Social Security System

- Compulsory social security system.
- Employer's contributions to social security (approx. 21% of salary) are paid on top of gross salary, capped at certain thresholds.
- These contributions finance the statutory health system, pension plan, nursing system and unemployment insurance.
- Health care plans are not offered by the employer; instead employees have contracts with health care providers which are financed via social security contributions.
- Additional occupational pension schemes are possible.



# Non-Compete Covenants and Non-Solicit

- Non-competition restrictions during ongoing employment are governed by statutory law.
- No statutory obligation to refrain from competition after the end of employment.
- Post-contractual non-compete covenants are only enforceable, if compensation in the amount of at least 50% of the last remuneration (including all remuneration components) is paid for the restriction period.
- Maximum duration of two years.
- Rules for managing directors are less strict.



# Summary

- 1 Plan ahead and seek advice early.
- 2 Decide carefully on how to hire your first staff in Germany and which option is best.
- 3 Get used to German employment law specifics.
- 4 Be aware of immigration / work permit requirements.
- 5 Protect the business by having a local confidentiality and non-competition agreement.
- 6 Get in touch with Taylor Wessing to discuss your plans and any questions!





# Questions and answers



**HR**  
COFFEE  
**BREAK**

**25 May 2022 – 10.30 CET**

# **Session #4: Arbeitskultur 2.0 - Neues aus dem Land der Aufgehenden Sonne Japan**

(Work culture 2.0 –  
News from the Land of the Rising Sun Japan)

**Dr. Michael Johannes Pils** (Co-Head Japan Desk, Taylor Wessing)



# Your Taylor Wessing Team

Christian Maron is a specialist lawyer for employment law. He advises companies and decision makers on issues of individual and collective labour law, drafts employment, termination as well as settlement agreements and handles termination litigation.

For many years, North American clients have sought his advice when entering the German market, in particular with regard to the implementation of requirements of the US parent company. In addition, his portfolio includes employment law aspects of restructuring measures as well as corporate transactions, works constitution law and representation of clients in and out of court.

Christian is an honorary lecturer at the Munich Business School (MBS), a member of the American Bar Association (ABA), lectures at labour law information events and regularly publishes on current issues in the field of labour law.

## Key areas of expertise

- Employment, Pensions & Mobility

## Languages

- German, English



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Awarded for Labor and Employment Law, [Handelsblatt Best Lawyers 2020](#)



## Dr. Christian Maron

Partner, Munich

+49 89 21038-151  
[c.maron@taylorwessing.com](mailto:c.maron@taylorwessing.com)

# Your Taylor Wessing Team

Jonas Warnken is a specialist lawyer for employment law. For many years, he has advised global and US companies in Germany, primarily in the IT and technology sectors. In addition, he specialises in advising on issues relating to visas and residence permits for the employment of foreign workforce in Germany. He also advises German companies and executives on all areas of individual as well as collective employment law. He regularly represents his clients in legal disputes before courts and in negotiations with works councils.

A further focus of his advice is European companies (Societas Europaea - SE) - from the time of their formation and involvement of European workforce to the negotiation of agreements.

Jonas is a member of the American Bar Association (ABA).

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- German, English



"eloquent, excellent expertise, responds quickly," client, [JUVE Handbook 2021/2022](#)



**Jonas Warnken**

Salary Partner, Hamburg

+49 40 36803-232  
[j.warnken@taylorwessing.com](mailto:j.warnken@taylorwessing.com)

# Employment, Pensions & Mobility – Comprehensive Expertise in Germany ...

Our practice area Employment, Pensions & Mobility is a major area within the firm, with excellent market reputation and visibility. We hereby follow a full-service approach, advising clients from various sectors and industries on all employment law related issues. Among our clients there are national employers as well as international companies.

**47 of our German lawyers** exclusively advise on employment law. Most of them are specialized lawyers for employment law with several years of practical experience. With this set-up, we offer national and international companies a comprehensive advice on individual and collective employment law topics as well as on social security law. In addition, we represent our clients in all instances of employment and social courts.

## Our legal advice includes:

- Ongoing advice on daily employment law
- Mobility / Immigration Law
- Employee participation models
- Outsourcing
- Employee privacy
- Restructuring and down-sizing, incl. reconciliation of interests and negotiations of social plans
- Termination of employment relationships
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- Collective bargaining law
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Employment Lawyers



# ... including capacity building

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► Fixed Term Contracts & Parental/ Maternity Leave

► Performance Management under German Law

► Employment Law in Germany

► Insider Trading

► Respect and Professionalism Workplace

► Legal Compliance Training



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EMPLOYMENT, PENSIONS & MOBILITY  
10 pitfalls when taking paid time off



EMPLOYMENT, PENSIONS & MOBILITY  
10 pitfalls when using an EOR in Germany



EMPLOYMENT, PENSIONS & MOBILITY  
10 pitfalls when terminating employees under German law



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Legal 500 Germany, 2021

JUVE Awards 2020:  
Nominierung  
„Kanzlei des Jahres  
für Arbeitsrecht“

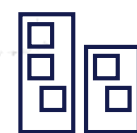


## ... and beyond...

**At each of our 29 offices, you find employment law specialists, a grand total of 130 worldwide.**

Within our cross-border Practice Group Employment, Pensions & Mobility, our employment experts blend the best of local business, industry and cultural knowledge with international experience to provide you with astutely commercial solutions.

We cooperate closely with long-standing and reliable partner law firms in countries where we do not maintain own offices.



**29**  
offices



**1100+**  
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**16**  
countries

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