

**TRADING UNDER THE LAWS
OF GERMANY**

**U. S. DEPARTMENT OF COMMERCE
BUREAU OF FOREIGN AND DOMESTIC COMMERCE**

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NOTICE

The present Government of Germany has been given power for a 4-year period to legislate by decree not subject to the ordinary constitutional limitations. As a result new laws may be made effective at any time. Changes affecting the topics dealt with herein will be published in the Foreign Legislative News Service of the Division of Commercial Laws, Bureau of Foreign and Domestic Commerce, Washington.

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FOREWORD

Germany occupies an interesting position among the nations of Europe. Its population (now perhaps 65,000,000) is large and consumes a goodly percentage of the better products and raw materials of trade and commerce; its territory is extensive (over 185,000 square miles), sustaining a highly industrialized population on a satisfactory wage basis in normal times; its industries, requiring markets for their own manufactures, have taught its people that they must consume foreign goods and thus create balances which will stimulate their international trade. In 1932, among the countries of Europe, Germany was outranked in trade with the United States only by the United Kingdom, supplying \$73,500,000 worth of our direct imports and taking \$133,500,000 worth of our direct exports. In a commerce of such proportions many legal questions naturally arise.

Business men realize that a knowledge of business conditions alone is not sufficient to attain the best results in international trade and maintain the smooth flow of commerce. Such knowledge must be supplemented by acquaintance with at least the more commonly known aspects of the law of the country with whose citizens they propose to deal. It is to furnish such a background that this bulletin has been prepared.

This publication does not attempt to give complete information on all German law nor even all German laws governing commerce or any particular phase thereof. It does, however, discuss the outstanding features of German law affecting trade; the salient points of company law and the law of contracts, agency, negotiable instruments, and bankruptcy; industrial property, taxation, and a brief exposition of the judicial machinery of Germany.

To supplement this information, current changes in the laws herein discussed will be noted in the Legislative News Bulletin and the more important changes given in greater detail in the General Legal Bulletin issued by the Commercial Laws Division of the Bureau.

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BIBLIOGRAPHY AND ABBREVIATIONS

BIBLIOGRAPHY

- Blachly, Frederick F., and Oatman, M. E. Government Administration of Germany. Johns Hopkins Press, 1928.
- Borchard, Edwin M. Guide to the Law and Legal Literature of Germany. Washington, Government Printing Office, 1912.
- Brodmann, Dr. Jur. Erich. G.m.b.H. Gesetz. Berlin-Leipzig, 1924.
- Engelmann, Arthur. History of Continental Civil Procedure. Translated by Robert W. Miller.
- Fisher, Dr. Rudolf. Das Aktienrecht. Leipzig, 1916.
- Gareis, Prof. Karl. Science of Law. Boston, 1911.
- Gray, John Chipman. Nature and Sources of the Law. Columbia University Press, 1909.
- Huvelin, Paul. History of Continental Commercial Law. Translated by Ernest G. Lorenzen.
- Jacusiel, Kurt. Das Recht der Agenten und Maekler. Berlin, 1925.
- Krueckmann, Paul. Institutionen des Buergerlichen Gesetzbuches. Berlin, 1929.
- Schachian, Dr. Herbert, and Ring, Viktor. Die Praxis der Aktiengesellschaft. Berlin.
- Schechter, Frank. Historical Foundations of Trade-Mark Law. Columbia University Press, 1925.
- Schuster, Ernest J. The Principles of German Law. Oxford, Clarendon Press, 1907.

ABBREVIATIONS

H.G.B.	Handelsgesetzbuch	Commercial Code.
B.G.B.	Buergerlichesgesetzbuch	Civil Code.
Z.P.O.	Zivilprozessordnung	Civil practice act.
E.G.	Einfuehrungsgesetze	Introductory laws.
D.G.	Depotgesetz	Custody of securities act.
T.C.	Uebereinkommen ueber den Eisenbahnfrachtverkehr.	Traffic convention.
E.V.O.	Eisenbahnverkehrsordnung	Railway traffic regulations.
G.m.b.H.G.	Gesetz betreffend Gesellschaften mit beschraenkter Haftung.	Limited-liability company act.
K.O.	Konkursordnung	Bankruptcy law.
W.O.	Wechselordnung	Bill of exchange law.
R.G.	Reichsgericht	Decisions of the German court.
S.G.	Scheckgesetz	Check law.
G.u.W.	Gesetz gegen den unlauteren Wettbewerb.	Law against unfair competition.