COURT IN THE ACT: GERMANY'S NEW COMMERCIAL COURTS CHALLENGE ARBITRATION'S DOMINANCE

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EU Litigation and Dispute Resolution Alert

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Germany has introduced specialised international commercial court chambers at several courts across Germany following the enactment of the Act to Strengthen Germany as a Legal Venue (*Gesetz zur Stärkung des Justizstandorts Deutschland*). The reform, among other things, reflects a deliberate policy choice to narrow the gap between court litigation and arbitration by addressing the features that have traditionally driven international parties towards arbitral proceedings: language barriers, lack of specialised tribunals and procedural inflexibility. Germany is thereby positioning its state courts as a genuine alternative to institutional arbitration for cross-border commercial disputes.

A notable procedural feature of the reform is the option for parties to agree that the Higher Regional Court (*Oberlandesgericht*) acts as the court of first instance with only a single layer of appeal directly to the Federal Court of Justice (*Bundesgerichtshof*). This streamlined appellate structure brings German court proceedings closer to the finality traditionally associated with arbitration, whilst preserving judicial oversight by Germany's highest civil court. Moreover, the new law allows parties to conduct proceedings in the English language, relieving many international litigants of the necessity for translations.

The reform prompts a timely comparison of the two principal mechanisms for cross-border commercial dispute resolution. On cost and procedure, commercial court proceedings are subject to statutory fees and offer a structured appeals process, whereas arbitration involves institution fees and arbitrator remuneration but affords very limited grounds for challenge, providing greater finality. On confidentiality, court proceedings are public, whilst arbitration is private—a material consideration for sensitive disputes. Regarding enforcement, court judgments benefit from the Brussels Regulation within the European Union, while arbitral awards are enforceable in over 155 states under the New York Convention, making arbitration the more versatile option for global enforcement. As to tribunal composition, judges are assigned by the court, whereas arbitration allows parties to select arbitrators with specific expertise.

Each mechanism offers distinct characteristics, and the appropriate choice will depend on the nature of the dispute, the parties' priorities and the jurisdictions in which enforcement may be required. Parties anticipating disputes in Germany or negotiating contracts with a German nexus should review their options in light of this reform.

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