Regulation, obligatory membership and disciplinary supervision of the legal profession in Germany
1 Professional rules and regulations of the legal profession

1.1 Position and function of a German lawyer (Rechtsanwalt)

Prior to the entry into force of the “Rechtsanwaltsordnung” (the rules applying to the legal profession) in 1878, the status of a lawyer was similar to that of a public servant. Ever since 1878, lawyers have been enjoying the position of an independent organ of the administration of justice. As such, lawyers are members of a liberal profession.

According to § 3 of the Federal Lawyers’ Act, „the Rechtsanwalt is an appointed and independent advisor and representative in all legal matters“.

Lawyers represent the interests of their clients and contribute to the implementation of the rule of law. Clients as well as society have to be able to trust the lawyers’ integrity and expert knowledge. In Germany, the following fundamental principles apply; they take the form of statutory professional rights and duties:

German Rechtsanwälte must:

- act independently from third-party instructions and financial interests;

- observe secrecy with regard to everything that comes to their knowledge in the course of their professional practice;
• respect the prohibition to represent conflicting interests;

• be particularly diligent when handling assets they are entrusted with;

• grant everyone access to justice in the framework of legal aid and as a state-appointed defence counsel and must

• pursue continuing training.

1.2 Education and admission to the Bar

Except for some special regulations concerning European lawyers, only someone who is qualified to become a judge can be admitted to the legal profession. For this qualification it is necessary to first study law at one of the 34 German Universities and pass the First State Examination. The legal studies are then followed by practical legal training and finally the Second State Examination. Both examinations are state examinations. This means that the examinations are not administered by the universities, but by the state itself, through special examination authorities created at the Ministries of Justice.

The practical two-year training is the same for all graduates, no matter if they wish to become judges, lawyers or public prosecutors in the end. This is why we use the term “Einheitsjurist”, which roughly translates as “universal jurist”.
After passing the second state examination, every graduate can apply for admission to the legal profession. The application must be addressed to the regional Bar in the district of which the applicant seeks to establish a law firm.

With the admission, the applicant automatically becomes a member of the regional Bar to which he has applied. An application can only be rejected for reasons stipulated by the Federal Lawyers’ Act (§ 6 (3) Federal Lawyer’s Act). Behaviour that makes an applicant appear unworthy to practice as a lawyer, is an example for such a reason. Another reason might be that the applicant does not have the right to take public office on grounds of a criminal conviction or that the applicant’s finances are in a state of deterioration. If there are no justified objections, the applicant has a right to admission to the legal profession. The respective regional Bar has no scope for decision-making.

Finally, to become a lawyer the applicant has to take an oath and prove that he has taken out professional indemnity insurance (or supply a provisional cover note from his insurance).

The admission to the legal profession comes into effect with the handover of a certificate issued by the respective regional Bar.
The regional Bar which the lawyer is a member of, is not only responsible for the admission to the legal profession, but also for the revocation of the admission.

The admission can be revoked if the regional Bar, after having granted admission, learns about facts which would have lead to a refusal of the admission at the time of application.

An admission to the Bar has to be revoked

- if a lawyer has become unfit to take public office on grounds of a criminal conviction;

- if a lawyer, for health reasons, is incapable of properly practising the profession of lawyer for longer than merely a temporary period unless it does not unduly obstruct the administration of justice for the lawyer to remain in the legal profession;

- if a lawyer’s finances have fallen into a state of deterioration, unless this does not put the interests of the client at risk;

- if a lawyer engages in an occupation which is inconsistent with the lawyer’s profession, in particular with the lawyer’s status as an independent organ of the administration of justice, or which may undermine confidence in the lawyer’s independence; this shall not be the case if the revocation would be an unreasonably harsh measure for the person in question;
• if a lawyer does not maintain the mandatory professional indemnity insurance.

If the reasons for the refusal of admission no longer exist, the revocation can be dispensed with.

Prior to revoking the admission to the legal profession, the lawyer concerned must be given a hearing. The regional Bar will then issue an order stating the reasons of revocation and serve it to the lawyer. He may appeal against the order within one month to the Higher Lawyers’ Court. Once the admission to the legal profession has expired the right to use the title “Rechtsanwalt” ceases.

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2 Obligatory membership with the Bar

2.1 The regional Bars

Membership with a regional Bar in Germany is obligatory in order to be able to call oneself Rechtsanwalt.

Admission as well as revocation of the admission by the regional Bars strengthens the lawyer's position as an independent organ of the administration of justice. The Bars are the organisational structures for the legal profession. On the one hand they represent the professional interests; on the other hand they ensure professional supervision. The Bars were established in the form of self-regulatory and independent infra-state bodies incorporated under public law.
As such they are subject to supervision by the state, but this supervision is limited to legal supervision and does not include technical supervision. This means that only the compliance with the law and with the Bar’s by-laws is supervised.

In Germany there are 28 regional Bars with a total membership of approximately 163,000 admitted lawyers.

2.1.1 The structure of a regional Bar

The entirety of all the lawyers admitted in the district of a particular Higher Regional Court, make up a Bar. As members of the Bar they form its General Assembly. The duties of the General Assembly are in particular

- to elect the Council;

- to decide on financial issues, especially the level of membership fees paid to the Bar;

- to audit the budget and approve the actions of the Council.

The Council members elect a Presidency from amongst themselves. Both the Council and the Presidency are thus democratically elected by the General Assembly.

The Presidency consists of the President, the Vice-President, the Secretary and the Treasurer. The Presidency conducts the business of the Council. It takes decisions concerning the administration of the Bar’s assets and reports to the Council every three months.
The President represents the Bar both in and out of court. He executes the decisions taken by the Council and the Bar. He chairs the meetings of the Council and the General Assembly.

The typical duties of a regional Bar are:

- professional supervision;
- protection and promotion of the members’ interests;
- consultation services for members regarding legal obligations;
- conciliation and dispute resolution between members, which has proven particularly successful when partnerships are dissolved and in employer-employee disputes.

2.1.2 Professional supervision

One important duty of a regional Bar is the professional supervision of its members – this is a strong expression of the legal profession’s self-regulation. The ministry of justice and the administration of justice are not involved in this supervision at all. The responsibility lies with the Bars only. The Bars monitor their members’ compliance with a lawyer’s professional duties and can take the respective measures should breaches occur.

If a lawyer violates his professional duties, the Bar will decide if it is sufficient to reprimand the lawyer or if disciplinary proceedings need to be initiated.
A reprimand is the measure of choice for minor breaches of professional rules and regulations and can be applied outside the formal disciplinary procedure. It helps to relieve the burden on the disciplinary courts.

**2.2 The German Federal Bar**

The German Federal Bar was established in 1959. It is the umbrella organisation of the 28 regional Bars. The German Federal Bar represents the German legal profession, which means all lawyers in Germany (approx. 163,000). As mentioned before, every lawyer is a mandatory member of a Bar. Therefore, The German Federal Bar represents the political professional interests of all lawyers at federal, European and international level.

The German Federal Bar does not supervise the individual lawyers. The professional supervision is, as explained above, the responsibility of the regional Bars. The statutory duties of The German Federal Bar are as follows:

- in matters concerning all regional Bars: to determine the opinions of the individual regional Bars and establish the majority opinion by way of joint declaration;

- in matters concerning all regional Bars: to communicate The German Federal Bar’s views to all competent courts and authorities;

- to represent the entirety of the regional Bars vis-à-vis authorities and organisations;
• to render expert opinions requested by a federal legislative authority, federal body or federal court;

• to promote the continuing professional development of lawyers.

The German Federal Bar, too, is subject to state supervision. But again, this supervision is limited to ensuring that the law and the by-laws are observed. Beyond this point, the state is not authorised to influence the work of The German Federal Bar.

The German Federal Bar takes decisions at its General Assemblies. The regional Bars are represented at the General Assembly by their Presidents. The Presidency of The German Federal Bar is elected by the General Assembly from amongst its members. The Presidency consists of the President, at least three Vice-Presidents and the Treasurer. All posts are honorary.

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3 Disciplinary Jurisdiction

3.1 The Courts

I mentioned the professional supervision through the Bars before. If a reprimand for breaches of professional duties is insufficient, disciplinary proceedings may be initiated. The disciplinary jurisdiction is made up of special courts which are not part of the general jurisdiction.
There are three instances:

The first instance is the Lawyers’ Disciplinary Court. There is one Disciplinary Court for the district of each regional Bar. The Lawyers’ Disciplinary Courts are made up of lawyers only. Their members are appointed by the responsible Land administration of justice for a period of five years. However, the appointments are based on proposals by the Bars. The members of the Disciplinary Courts must be members of the relevant regional Bar. Decisions are taken by divisions consisting of three members, including the Presiding Judge.

The second instance is the Higher Lawyers’ Court at the Higher Regional Court. If required, several senates can be formed. Each senate consists of three lawyers acting as judges and two professional judges. Only lawyers can become President of the Higher Lawyers’ Court and presiding judges of the senates. Concerning appointments, the same rules as for the Lawyers’ Disciplinary Courts apply: the lawyers are appointed by the Land administration of justice upon proposal by the Bar.

The third instance is the Federal Supreme Court with its Senate for Matters concerning the Legal Profession. The Senate consists of the Court President, three members of the Court and three lawyers as associate judges. The associate judges are appointed by the Federal Ministry of Justice upon proposal by The German Federal Bar. Their term of office is five years.
3.2 Proceedings

Disciplinary proceedings are instituted at the Lawyers’ Disciplinary Court upon submission of a writ by the Public Prosecutor’s office. The Public Prosecutor’s office at the Higher Regional Court in whose district the Lawyers’ Disciplinary Court has its seat acts as Public Prosecutor in the proceedings before the Lawyers’ Disciplinary Court.

It is important to point out that criminal proceedings take priority over disciplinary proceedings. If criminal proceedings have already been initiated against a lawyer for the same misconduct, proceedings before a Lawyers’ Disciplinary Court must be suspended until the conclusion of the criminal proceedings. Generally, the actual findings underlying the judgment in the criminal proceedings or in the proceedings for the imposition of a fine are binding for the disciplinary proceedings.

When disciplinary proceedings are under way, a lawyer must neither be provisionally detained, nor arrested or brought before court. As a general rule, lawyers are allowed to defend themselves and only in exceptional cases need to appoint another lawyer for their defence. Accused lawyers have the right to inspect the files. The main proceedings before the Lawyers’ Disciplinary Court are usually held in camera.

If the Disciplinary Court comes to the conclusion that a lawyer has acted in negligent breach of his duties, it can impose the following sanctions:
1. a warning;

2. a caution;

3. a fine of up to 25,000 Euros;

4. a ban on acting as representative and counsel in certain fields of law for a period of one to five years;

5. exclusion from the legal profession.

The least severe type of sanction is a warning. It may be imposed if the lawyer is found guilty of a first, minor misconduct that does not affect client interests and has no further repercussions.

A caution has more severe consequences than a warning. A lawyer who is given a caution may not stand for election to the Council and to the Statutory Assembly (the legal profession’s parliament) and cannot be a member of the courts in matters concerning the legal profession for five years.

A fine has the same consequences as a caution with respect to Council elections and disciplinary court membership. It may only be imposed on lawyers who have committed serious breaches. The financial impact for the lawyer may be considerable, as the upper limit for a fine is 25,000 Euros.

A temporary ban on acting as representative may only be declared for intentional severe breaches of professional duties. This might, for example, be the case if a lawyer
continues to act in breach of his duties despite previous punishments.

The exclusion from the legal profession is the most severe disciplinary punishment. It usually deprives the lawyer of his livelihood. According to the principle of proportionality this sanction may only be imposed if the lawyer is found guilty of the most severe intentional breaches of his professional duties and only if less restrictive measures would jeopardize the course of justice. A re-admission to the legal profession can be considered after a period of 8 years. The convicted lawyer may not stand for Council and Statutory Assembly elections and cannot be a member of the courts in matters concerning the legal profession for 15 years.

So far, lawyers have only been excluded from the legal profession for breaches of trust, especially vis-à-vis their own clients, betrayal of their clients or for acting as an accessory after the fact, fraud and false statements.