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New legal requirements for e-mail correspondence in Germany

German companies corresponding via e-mail had to implement a new law from the beginning of this year. The German law which refers to the electronic company register, cooperative register and enterprise register (EHUG) came into force. This law sets new requirements for business letters.

Information which previously only had to be included in printed business letters, e.g. in the footnote of the first page, must now appear in all types of business letters including e-mails. The information in the business letters must be clearly visible, a requirement which also applies to e-mails. However, in e-mail correspondence, the transmission of an attached electronic business card will probably not meet the requirements of the new rules because not every recipient is able to open electronic business cards.

The rules are laid down in the newly formulated Section 37a of the German Companies Act (*Handelsgesetzbuch*), Section 80, par. 1, first sentence of the German Stock Corporations' Act (*Aktien-gesetz*) and Section 35a, par. 1, first sentence of the German Limited Liability Companies' Act (*GmbH-Gesetz*). The new regulations require that certain standard information must be included. Companies to which the new regulations apply, must indicate not only the name of the company but also the name and number of the court where the company is registered.

The new rules apply to all external business communications, i. e. every written notice for external use irrespective of the number of recipients. Confirmations and answers to requests, order sheets and bills of delivery, as well as invoices and receipts must bear the required information.

The new law stipulates that all electronic business communications must now contain the required information. The only exception to this rule is laid down in the second paragraph of the afore mentioned regulations which allows for information to be omitted in the case of existing business relations where complete forms are exchanged. However, order sheets do not meet the requirements of this exception.

Each individual must adhere to the new requirements as required by the legal nature of their business. In the event of non-compliance, a company could be ordered to pay a large penalty e. g. a limited liability company (GmbH) could be ordered to pay a penalty of up to € 5,000.

Furthermore, non-compliance could result in a warning letter due to an infringement of competition law, which could potentially be even more costly. We anticipate a wave of warning letters initiated by societies specialized in warning letters and also competitors claiming infringement of competition law, i. e. Section 4 No. 11 German Competition Act (UWG), because of an advantage in business due to non-observance of the new regulations. Eventually, individuals interested in sending warning letters can easily gather the necessary correspondence via e-mail requests. In many cases simple test questions, for example asking for a sales offer or the request for information relating to the company's offered services, can be made for that purpose.

It is therefore extremely important to deal immediately with the relevant new regulations and implement their requirements.

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