

GERMANY

About us

1. The German Federal Bar (BRAK) is the umbrella organisation of the 28 regional Bars in Germany. It acts as a central organisation for the legal profession and represents the interests of all German lawyers (around 165,000) who also members of the regional Bars. The membership of a regional Bar is mandatory and a precondition for obtaining a lawyer's license.
2. The BRAK safeguards and represents the professional interests of all lawyers in Germany at a federal, European and international level. Through its committee work, the BRAK is significantly involved in legislative processes and, as a self-regulating organisation governing the legal profession, it issues professional laws and regulations for the German legal profession.
3. The duties of BRAK include the following:
 - a. in matters that concern all regional Bars, determining the opinions of the individual regional Bars and establishing the majority opinion by way of joint declaration;
 - b. in matters that concern all regional Bars, to present the opinion of The German Federal Bar to all relevant courts and authorities on regional and federal level;
 - c. to represent the individual regional Bars in dealings with authorities and organisations;
 - d. to render an expert opinion required by a federal legislative authority or body or the Federal High Court of Justice (Bundesgerichtshof);
 - e. to promote the professional development of lawyers.
4. The BRAK is not responsible for the professional supervision of individual lawyers. That responsibility is assumed by the regional Bars.

Domestic Activities

Electronic legal transactions (beA)

5. One of the most important topics on the BRAK's agenda was the establishment of electronic legal transactions. The Act on the promotion of electronic legal transactions with the courts imposes a statutory obligation on the BRAK to establish a special electronic mailbox (besonderes elektronisches Anwaltspostfach, (beA)) for every German lawyer. The lawyer's obligation to maintain an electronic mailbox has now commenced.
6. The special electronic mailbox (beA) enables lawyers to securely communicate electronically with the courts as well as with each other. The top priority for the development of the beA is system security. By employing state of the art authentication and encryption technologies it can be ensured that no unauthorised person will be able to access the mailbox.
7. On 28 November 2016 the BRAK launched the special electronic mailbox for lawyers. In 2017, the focus was mainly on the implementation of mailboxes for

lawyers. These had to be adapted to the legal requirements of the Regulation on the registers of lawyers and electronic mailboxes (RAVPV). In 2018, the system security was improved and a comprehensive security analysis was carried out. Subsequently, the necessary measures were implemented.

8. In 2019 the system was further improved and maintained to guarantee its smooth operation.

Adjustment of lawyers' fees

9. The BRAK is working intensively to ensure that the remuneration of lawyers is adjusted during the ongoing legislative period. The remuneration of lawyers was last adjusted in 2013 and it no longer fully reflects economic developments in Germany.
10. In April 2018 a joint list of requirements for adjusting the legal fees, drafted by the BRAK and the German Lawyers Association, was handed over to the Federal Minister of Justice, Dr. Barley. In addition to numerous suggestions for structural improvements to the Lawyers' Remuneration Act, this catalogue also contains the lawyers' demand for a linear adjustment of the rates contained in the fee scale. In order to initiate the amendment of the Lawyers' Remuneration Act, the BRAK has taken up intensive advocacy at federal level, particularly with the parliamentary groups of the German Parliament (Bundestag), and is strongly committed to this demand at state level.

Reform of the professional-practice firm with legal capacity

11. At the end of August of this year, the Federal Ministry of Justice and Consumer Protection presented a key issues paper for a draft law on the new regulation of the law of lawyers' professional associations and for the amendment of further regulations in the field of legal services. The Ministry is taking up numerous proposals previously submitted by the BRAK and also proposing new solutions which have been met with criticism.
12. The Federal Ministry of Justice and Consumer Protection wants to create uniform rules for the professional societies of the legal profession in a legally neutral manner. This means that lawyers shall have the same choices as other professions when it comes to the decision of incorporating their business. Lawyers should have at least the option to choose between all national and European legal company forms as a vessel to conduct their legal services. This corresponds with the request issued by the BRAK earlier this year.
13. In the opinion of the Federal Ministry of Justice and Consumer Protection, it is still justified to fundamentally prohibit pure equity interests of shareholders who are not active in the company in order to protect the principle of independence of lawyers. This would meet an important demand of the BRAK.
14. However, the Federal Ministry of Justice and Consumer Protection has left open the question of whether the prohibition of pure equity investments can be loosened in limited cases, as for example with regard to no longer active members of the profession. The BRAK has suggested that it should not be allowed in case of pure equity investments with the aim of opening up alternative financing channels

through venture capital for lawyers who, for example in the area of legal tech, have to make high initial investments in order to be able to offer new legal services.

15. While the BRAK expressly opposes a far-reaching extension of the possibilities for inter-professional cooperation, the Federal Ministry of Justice and Consumer Protection would like to implement far-reaching changes in this area. In their opinion, lawyers should be allowed to practice their profession with members of all "compatible professions". Since, according to the highest court's rulings, only estate agents are now de facto excluded as a profession to partner up with lawyers, this would amount to a complete liberation. The BRAK is concerned that to allow lawyers to partner up with any profession could lead to a weakening of the lawyer's duty of confidentiality in particular.

Soldan Moot

16. This year, for the 7th time, the BRAK co-organised the Soldan Moot for the professional practice of law. This is a nationwide Moot Court competition for students of German law faculties. At the end of Soldan Moots, the winners are determined in four categories (Best Plaintiff's Statement, Best Defendant's Statement, Best Oral Performance in the Preliminary Rounds, Victory in the Final). This year, 25 teams from 17 universities competed against each other on two trial days.

4th International Lawyers' Forum

17. On 5 April 2019 the BRAK's 4th International Lawyers' Forum took place in Berlin. It was dedicated to the topic "Confidentiality - A Lawyers' Issue". More than 120 guests, mainly representatives of lawyers' organisations from 32 countries in Western and Eastern Europe, Central Asia, Asia, the USA, North Africa and Turkey, took part. For the first time, lawyers' organisations from Algeria, Morocco, Libya, Azerbaijan, Mauritania and Jordan were represented. The major international lawyers' organisations such as the International Bar Association (IBA), the Union Internationale des Avocats (UIA), the Council of Bars and Law Societies of Europe (CCBE) and the International Association of Young Lawyers (AIJA) were represented at a high level. For the first time, the Pan African Lawyers Union (PALU), a large African law firm, represented by its Nigerian President Emeka Obegolu, also gave us the honour of their presence.
18. The IAF has established itself as a globally effective event. At the conference, during which simultaneous translation was provided in English, Russian and Arabic, the participants discussed the models of confidentiality worldwide, how confidentiality can be maintained in its core despite numerous interventions by the state in the name of crime and terror prevention, and exchanged views on confidentiality in times of new media. The IAF was guided by the idea that only an internationally well-connected legal profession is capable of effectively countering attacks on confidentiality or other elementary professional rights.
19. The forum is held every second year and gives participants from all over the world an opportunity to connect with bar leaders in discussions on legal topics and to broaden their networks across continents.

Activities in the Asia-Pacific Region

Visit of The Law Society of Hong Kong – Seminar on beA

20. Within the framework of the International Lawyers' Forum, which took place in Berlin in April 2019, representatives of the Law Society of Hong Kong and the Ministry of Justice of the SAR Hong Kong took the opportunity to learn more about the legal profession's special electronic mailbox (beA). The BRAK organised an all-day seminar on this topic for the delegation. The seminar took place on 4 April 2019 at the request of the Ministry of Justice of the SAR Hong Kong.
21. Experts from the German administration, the courts and the legal profession presented the beA system. BRAK Vice President Dr. Martin Abend opened the event by outlining the history of beA and reporting on the lessons learned. He then explained the legal framework of electronic legal transactions and the beA in particular. Following on from this, Rainer Kaul, Ministerialrat in the Federal Ministry of Justice and Consumer Protection, described the implementation of beA from the government's point of view. Dr. Michael Gädeke, judge at the Social Court Berlin, gave some vivid insights from the judiciary's point of view. The second part of the workshop was dedicated to technology: Hannes Müller, IT consultant at the BRAK and beA project manager, demonstrated the use of beA and explained implementation issues.

Visit of ACLA and China Law Society

22. On 11 June 2019, Dr. Thomas Kuhn, Vice President of the Munich Bar, and the responsible Director of the BRAK met in Feldafing (near Munich) with Chinese judiciary officials working in the field of international cooperation of various courts of the People's Republic of China. During a two-week seminar trip organised and financed by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, the judiciary officials were to learn more about the German judicial system and basic principles of the rule of law. In this context, the representatives of the Munich Bar and the BRAK gave a morning lecture on the self-administration of the legal profession and the system of bar associations in Germany.
23. On 16 October, a delegation of the China Law Society from Henan visited the BRAK. The delegation, consisting of five judges from the Henan People's Court of Zhengzhou, were interested in the structure of self-regulation of the advocacy as well as the interaction and cooperation between judges and lawyers in Germany.

Taiwan Bar Association

24. A bilateral meeting was also held with the Taiwanese legal profession on 4 April 2019, prior to the International Lawyers' Forum, on the subject of shaping future cooperation. The Taiwanese colleagues are very interested in an exchange of young lawyers.
25. On 12 August 2019 the BRAK was visited by a delegation of the Ministry of Justice Taiwan. The topic of the round table discussion was the modernisation of the law of obligations in Taiwan. The applicable civil code of Taiwan has incorporated extensive provisions of the law of default of the German regulations on obligation as stated in the German Civil Code. The regulations have met with widespread criticism

and are to be modernised. The Ministry of Justice of Taiwan plans to revise the provisions. On behalf of the BRAK, the chairman of the Committee on the Law of Obligations, attorney Prof. Dr. Volkert Vorwerk, and committee member Dr. Andreas Eickhoff took part in the discussion. The German experts shared their experience going through the same modernisation process in 2007 in Germany and were able to answer very specific questions on the old regulations.

Visit of the Japanese Bar Association

26. The Liaison Officer of the Japanese Bar, Mr. Mikio Tanaka, also used the International Lawyers' Forum to exchange views with the BRAK on the future cooperation of the two organizations in a bilateral meeting. It was decided to organise a meeting with the Japan Federation of Bar Associations in Summer 2020 on the topic of beA.

LegalTech Forum in Tokyo

27. Together with the German Japanese Lawyers Association, the BRAK organised a LegalTech Symposium at the Keio University in Tokyo. German and Japanese experts from the administration, judiciary and the legal profession discussed the influence and development of LegalTech on their work and how it will change the future workplace and services provided by the legal profession. The event was very well received in Japan with 90 participants. The symposium's success is due to the support as well as the participation of the Japanese Vice-Minister of Justice and the German State Secretary of the Ministry of Justice. Both high-ranking government officials were speakers and discussion partners at the symposium and at the bilateral meeting, which was organised one day before by the ministries of both countries.

Visit of the Vietnam Bar Federation

28. On 27 and 28 February 2019, the BRAK, together with the German Foundation for International Legal Cooperation (IRZ e.V.) and the Vietnam Bar Federation (VBF), organised two seminars for criminal law practitioners on the topic "Skills in developing an interrogation plan and drafting a defence in criminal cases – the German and the Vietnamese perspective" in Hanoi and Nha Trang. Two experts from Germany explained in lectures and workshops the rights and duties of the criminal defence lawyer, the question technique in criminal proceedings and gave insights into the practice of criminal defence in Germany. The seminars were organised in the light of recent changes to the Vietnamese Code of Criminal Procedure, which came into force after a long struggle on 1 January 2018 with the aim to strengthen the rights of the accused and their defenders. For example, the right to silence and the presumption of innocence of the accused were strengthened, but also the right of the defence counsel to participate in the preliminary proceedings were enshrined in law.
29. From 30 June to 6 July 2019 the BRAK, together with the German Foundation for International Legal Cooperation, hosted the VBF in the framework of a study trip. During their one-week stay in Berlin, the aim was to familiarise the participants with the practical aspects of criminal defence and the system of Bar-approved specialist

lawyers in criminal law. The BRAK organised a very large part of the programme which included visits to the German Ministry of Justice, various courts and law firms as well as talks with various experts on different topics.

30. The study trips as well as the regular expert lectures in Vietnam are measures which are rooted in the German-Vietnamese Rule of Law Dialogue which has been conducted regularly since 2011.

LAWASIA Seminar – FDI in the Asia Pacific Region

31. The event was a success for the BRAK. As co-organiser and main actor in the organisation on site, we were able to ensure the smooth functioning of all processes involved. The already good relations with the members of the board of LAWASIA were intensified and further solid contacts were established with the German East Asia Business Association and the Chamber of Commerce Frankfurt am Main. The BRAK was able to expand the network with its partner organisations and other bar associations from the Asia-Pacific region.
32. However, the seminar only attracted a small number of participants. On the one hand, it was an event for which LAWASIA charged a participation fee of 120 EUR. On the other hand, advertising for the event had little success, similar to the seminar held in Berlin in 2016. The event was advertised via the networks of the four partner organisations LAWASIA, the Chamber of Commerce Frankfurt am Main, the German East Asia Business Association and the BRAK, on all available channels. The BRAK promoted the event with circulars, newsletters, in the BRAK magazine as well as via an extensive e-mail distribution list of the Asia experts and interested parties. Various German-Asian organisations and interest groups were contacted, unfortunately with only very limited success.
33. Since this is an event which is very complex regarding preparation as well as the development of the advertising activity, the workload seems rather disproportionate, considering the limited number of manpower available to carry the workload of this project; especially since the BRAK is not a commercial organiser and organises open events only to a very limited extent.
34. Against this background, it is advisable to fundamentally question the format of the event. One idea would be to integrate LAWASIA into the BRAK International Lawyers' Forum with a follow-up event. The seminar could be advertised to the 100-200 participants of the International Lawyers' Forum. Especially to the delegates from North Africa, this may be of interest as they would be able to avoid high travel expenses to Asia and meet a good line-up of Asian experts in Germany. The International Lawyers' Forum takes place every other year in Berlin.

The German Federal Bar

22 October 2019