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Germany Introduces Contact Bans Amid COVID-19 Crisis

Companies should consider how to avoid liability risks in light of the measure.

On 22 March 2020, the German federal government agreed with the minister presidents of the federal states (Bundesländer) to introduce nationwide contact bans. However, this action does not exclude the possibility that federal states or individual districts (Landkreise) will continue to issue or maintain stricter regulations. The agreement explicitly provides for such a possibility according to the federal government's press release. Immediately after the announcement of the agreement on minimum restrictions, the Bavarian state government, for example, announced that it intends to adhere to the stricter regulations already adopted, even if this does not necessarily mean any changes for companies.

Consequently, companies may have to deal with different regulations and different standards of duty — especially if they have establishments (Betriebsstätten) in different federal states, or if employees travel across federal state borders. Companies now have to consider their assortment of duties resulting from the implementation of the regulations adopted — with a focus on how to avoid possible liability risks. Subsequently, they will need to implement various protective measures.

What regulations apply in the context of the contact ban?

The federal government and the federal states have agreed on the following [guidelines](#) for restricting social contacts:

- Contact with people other than members of one's own household should be reduced to an absolutely necessary minimum.
- In public, people should keep a minimum distance of at least 1.5 meters from others, not including members of one's own household.
- Going out in public is only permitted either alone, with members of one's own household, or with no more than one other person not living in the same household.
- Commuting to work, emergency care, grocery shopping, visiting the doctor, participation in meetings, necessary appointments and examinations, helping others, or individual sports and exercise in the fresh air as well as other necessary activities remain permissible.
- Visiting public places, apartments, and private facilities in groups (e.g., for festivities) is prohibited.

- Restaurants and catering outlets are to be closed to the public, with the exception of delivery and collection services.
- Personal care service providers such as hairdressers, beauty salons, massage parlors, tattoo studios, and similar establishments are to be closed. This provision expressly does not apply to medically necessary treatments.
- In all establishments, especially those open to the public, hygiene rules will be respected and effective protective measures for employees and visitors will be introduced.
- These measures will have a duration of at least two weeks.

How will the contact bans be implemented?

The federal states must now substantiate these guidelines and implement them into their respective laws — although the specific laws serving as the basis for such implementation remain unclear. The German Infection Protection Act (Infektionsschutzgesetz, IfSG) or the respective police law of the federal states are possible options. On the basis of the IfSG, issuing ordinances (Rechtsverordnungen) and adopting general orders (Allgemeinverfügungen) can both be considered. (For more information, [see this resource](#)). However, legal acts based on the police laws also cannot be excluded.

What sanctions are threatened in case of violation of the contact bans?

According to the press release of the federal government, violations of the contact restrictions are to be monitored by the local administrative authorities as well as the police, and sanctioned in the event of violations. However, there are no specific guidelines regarding the type and amount of sanctions.

The above scenario of varying implementation on the basis of regulations under federal state law is not only relevant concerning the exact content, but also regarding any sanctions that may be imposed in the event of violations.

Regarding the possible sanctions, for example within the framework of the IfSG, please refer to Latham's *Client Alert* on [curfews](#).

How can companies avoid liability risks?

As with curfews, companies maintaining their operations will have to deal with the consequences of contact bans. Although the minimum distance rule is to apply primarily in public areas, the government has provided a clear recommendation to reduce contact with other people to an absolutely necessary minimum. In addition, companies must adhere to specific guidelines.

The rules also set the standard for supervisory duties by the person(s) responsible within the company. The standard will be reinforced by federal states' local implementation. Specifically, companies should initiate, reconsider, or refine the following decision-making and organizational processes:

- **Examination of the legal situation:** First, companies should monitor further developments and identify applicable rules to their operations. The contact bans may differ among federal states. Concurrently, curfews might apply. These restrictions can impact companies' processes, employees, and supply chains. Companies that have establishments in several federal states or whose employees travel across federal state borders must decide whether they will uniformly comply with the rules of the relevant federal state with the strictest requirements, or whether the establishments will only comply with local requirements. A company can only avoid committing administrative or

criminal offences and corresponding sanctions by thoroughly examining the legal situation applicable to that company and then implementing the appropriate protective measures.

- **Employer certificate** (Arbeitgeberbescheinigung): Companies should check for their respective federal state whether certificates for employees are necessary to ensure that their workplaces can be reached or whether they have to be adjusted.
- **Internal organization and effective protective measures:** The catalogue of regulations addresses companies directly and claims “effective protective measures,” in addition to compliance with hygiene regulations. Whether and to what extent such protective measures will be further specified for companies in the respective federal states is to be determined. In the meantime, the following provisions apply:
 - If the operation of the company is to be maintained, the company should — at a minimum — adhere to regulations on observing minimum distances at internal company meetings (e.g., during lunch breaks, canteens, work areas, smoking zones, etc.) by establishing such policies, communicating them appropriately, and supervising meetings. Meetings should be conducted online or via telephone if possible. If a personal meeting is required, the largest possible meeting rooms should be chosen and only the smallest possible number of people should be present. Generally, there should be no accumulation of people. “Congestion traps” — for example, when entering or leaving the workplaces — should also be avoided.
 - In addition, there are various general recommendations for companies from the authorities and specialist institutions. Therefore, companies should ensure that these recommendations are implemented accordingly. Recommendations currently exist, for example, from the Federal Institute for Occupational Safety and Health (https://www.baua.de/DE/Themen/Arbeitsgestaltung-im-Betrieb/Biostoffe/FAQ/FAQ_node.html) or the Federal Center for Health Education (<https://www.infektionsschutz.de/coronavirus/>). Furthermore, the [Robert Koch Institute](#) remains the central source for recommendations on how to deal with the risks associated with COVID-19.
 - Finally, special recommendations may be made on a sector-specific basis — for example, through sector associations (such as sectors with a high level of public traffic). Therefore, companies should also monitor carefully respective announcements.
- **Off-site organization:** In addition, company guidelines or specifications for off-site activities should be adapted; these are also relevant protective measures in the aforementioned sense. For example, business trips should be discontinued if possible. If business trips cannot be completely dispensed, the behavior in the various means of transport (e.g., train, taxi, etc.) and the choice of transport should be optimized.
- **Documentation:** Compliance with legal requirements (such as the IfSG) should be documented. Companies should also appropriately allocate internal responsibilities and take other organizational measures if they have not already done so. Through such an approach, the company and its responsible persons may avoid future fines in accordance with the law on administrative offenses in the event of infringements by their own employees, just as with the employer certificates mentioned above. In the worst-case scenario, if relevant requirements are implemented carelessly, company directors could be prosecuted under the principles of so-called “principal's liability” (Geschäftsherrhaftung) based on their position as guarantor (Garantenstellung).

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