

The new German Supply Chain Law

King & Wood Mallesons Rechtsanwaltsgesellschaft mbH

Corporate | M&A | Private Equity | Competition & Antitrust | Finance | Tax | Restructuring | Capital Markets



- 01** Introduction
- 02** Companies concerned
- 03** Duties of care
- 04** Measures
- 05** Sanctions and liability
- 06** Next steps



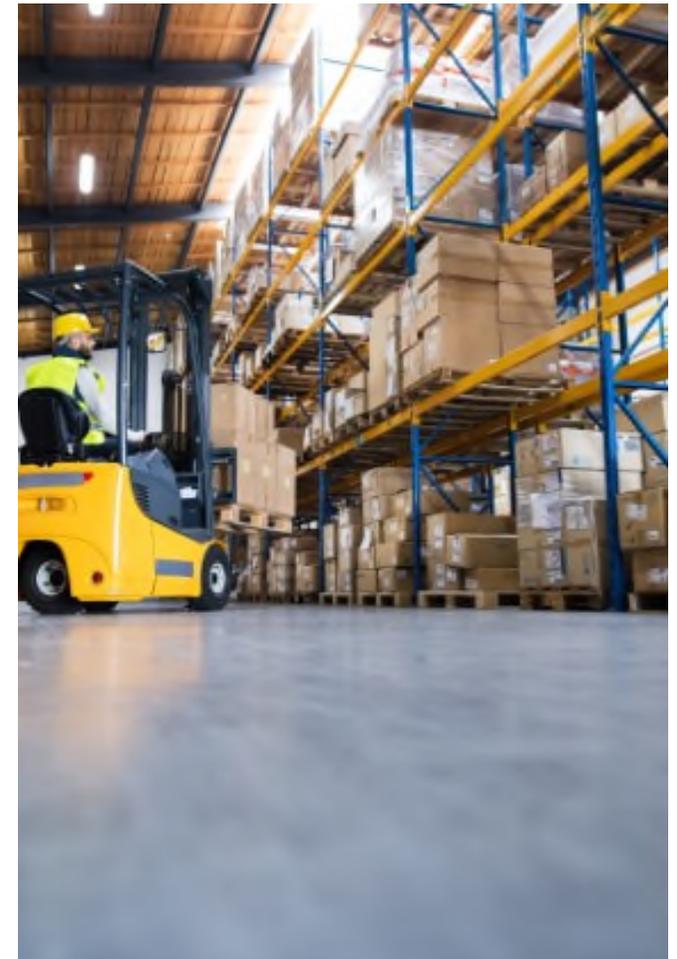


01

Introduction

Introduction

- Law on Corporate Due Diligence in Supply Chains
- **History:** Bundestag: 11 June 2021, Bundesrat: 25 June 2021, Entry into force: 1 January 2023
- **Purpose of the law:** Improve the protection of human rights in global supply chains (compliance with basic human rights standards, no German social standards).
- **Content:** Businesses must ensure that human rights are respected throughout their global supply chain. The law defines corresponding due diligence obligations for companies.



A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are arranged in a way that they converge towards the top of the frame, creating a strong sense of height and scale. The sky is a clear, bright blue, and a single commercial airplane is visible in the upper center, flying towards the viewer. The overall color palette is dominated by the blues of the sky and the buildings, with some highlights from the sun reflecting off the glass surfaces.

02

Companies concerned

Companies concerned

- **German companies:** Companies - irrespective of their legal form - with their head office, principal place of business, administrative headquarters or statutory seat in Germany.
- Companies above a certain **number of employees:**
 - From 1 January 2023 Companies with "as a rule" 3.000 employees
 - From 1 January 2024 Companies with „as a rule" 1,000 employees
- Determination of the number of employees:
 - **"as a rule"**: retrospect and prognosis required
 - Inclusion of all domestic employees in the **group**
 - Inclusion of **temporary workers** (from 6 months) and **posted employees**
- Relevance outside the direct scope of application:
 - Company is part of a German group (company belonging to the group is part of the parent company's own business division)
 - Company is part of a relevant supply chain (direct and indirect suppliers)

03

Due diligence



Due diligence

Companies are obliged to observe certain standards in their own business and in their supply chains:

Human rights standards

- No child labour
- No slavery
- No forced labour
- Compliance with minimum standards of occupational safety
- Trade union freedom
- No discrimination in employment
- Adequate payment of employees (payment of local minimum wages)
- No serious violations of environmental law
- No forced eviction from land
- No use of untrained security services (to avoid torture)

Environmental standards

- No production, use or discharge of mercury and certain other chemicals banned under the Minamata or Stockholm Conventions.
- Waste management in accordance with the Stockholm Convention.
- No export or import of waste in violation of the Basel Convention.

04

Measures





Measures

Overview

- Establishment of a **risk management system**
- Determination of an internal **responsibility**
- Carrying out regular **risk analyses**
- Adoption of a human rights **policy statement**
- Anchoring **prevention measures** in the own business unit and towards direct suppliers
- Taking **remedial action** in case of infringement of a protected legal position
- Establish a **complaints procedure** to report human rights violations
- Implementation of due diligence with regard to risks at **indirect suppliers**
- **Documentation and reporting** with regard to the fulfilment of due diligence obligations

Measures

Risk management

- Anchoring through appropriate measures in all business processes
- Measures to identify the risks
- Measures to prevent, stop or minimise injuries (when causing or contributing to the injury)
- Appointment of a person to monitor risk management
- Annual information of the management on the activities of the representative
- Appropriate consideration of the interests of own employees, employees within the supply chain and other affected parties



Measures

Risk analysis in own business and with direct suppliers

- **Identification** of risks for the own business unit and direct suppliers
- Appropriate **weighting and prioritisation** of identified risks
- **Internal communication** of the risk analysis to the relevant decision-makers and appropriate consideration of the results of the analysis
- Implementation at least once a year and also on an ad hoc basis if the company has to expect changes in the risk situation in the supply chain (e.g. when introducing new products, projects or a new business field).





Measures

Prevention measures

- **Policy Statement** on the Human Rights Strategy
- Annual and event-related **review of the** effectiveness of the prevention measures (as with risk analysis)

Prevention in the own business

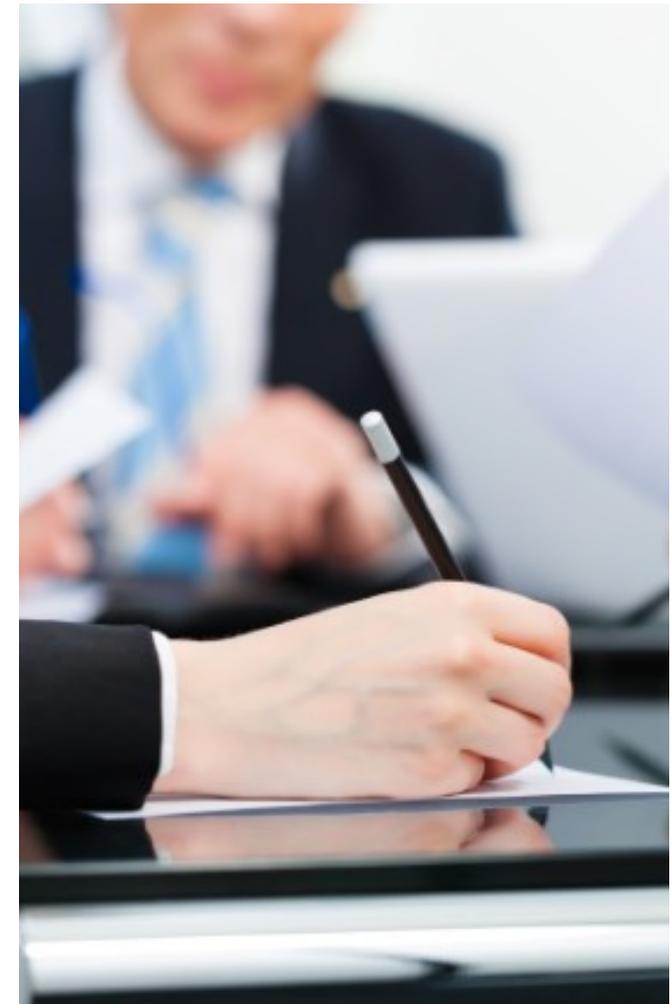
- Implementation in the relevant **business processes**
- Develop and implement **procurement strategies and practices** to avoid or mitigate identified risks.
- Conduct **training** in the relevant business areas
- Verification of compliance with the policy statement through risk-based **control measures**



Measures

Prevention vis-à-vis a direct supplier

- Consideration of human rights and environmental expectations when **selecting** a direct supplier
- **Contractual assurance** from a direct supplier that it complies with the required human rights and environmental standards and adequately addresses them along the supply chain.
- Agreement on appropriate **contractual control mechanisms**
- Conduct **training** and education to enforce the direct supplier's contractual assurance.
- Implementation of risk-based control measures based on the agreed control mechanisms to verify compliance with the human rights strategy at the immediate supplier



Measures

Remedial action

- Development and implementation of a concept to **minimise** the infringement at a direct supplier that cannot be remedied in the foreseeable future
- Joint development and implementation of a plan to **remedy** the grievance at the supplier concerned
- Strengthening influence through **industry initiatives and industry standards**
- **Temporary suspension** of the business relationship
- Annual and ad hoc **audit** of the effectiveness of the remedies



Measures

Ultima Ratio: Termination of the business relationship

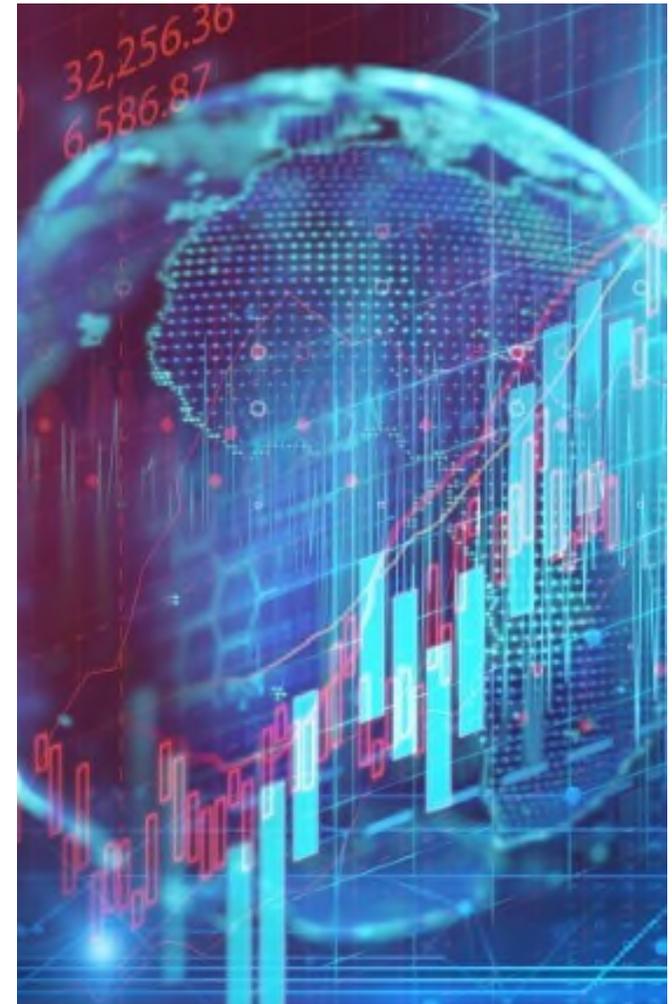
Termination of a business relationship is only required under the following conditions

- Very serious injury
- No remedy through implementation of developed measures after the specified time has elapsed
- No other milder remedy available
- Increasing the capacity to influence does not seem promising

Measures

Measures at indirect suppliers

- Due diligence obligations only apply on an **ad hoc basis** and only if the company becomes aware of a possible breach.
- Occasion-related measures:
 - Carrying out **risk analysis**
 - Development and implementation of a **concept for** minimisation and avoidance
 - Anchoring appropriate **prevention measures** vis-à-vis the originator (e.g. industry initiatives)



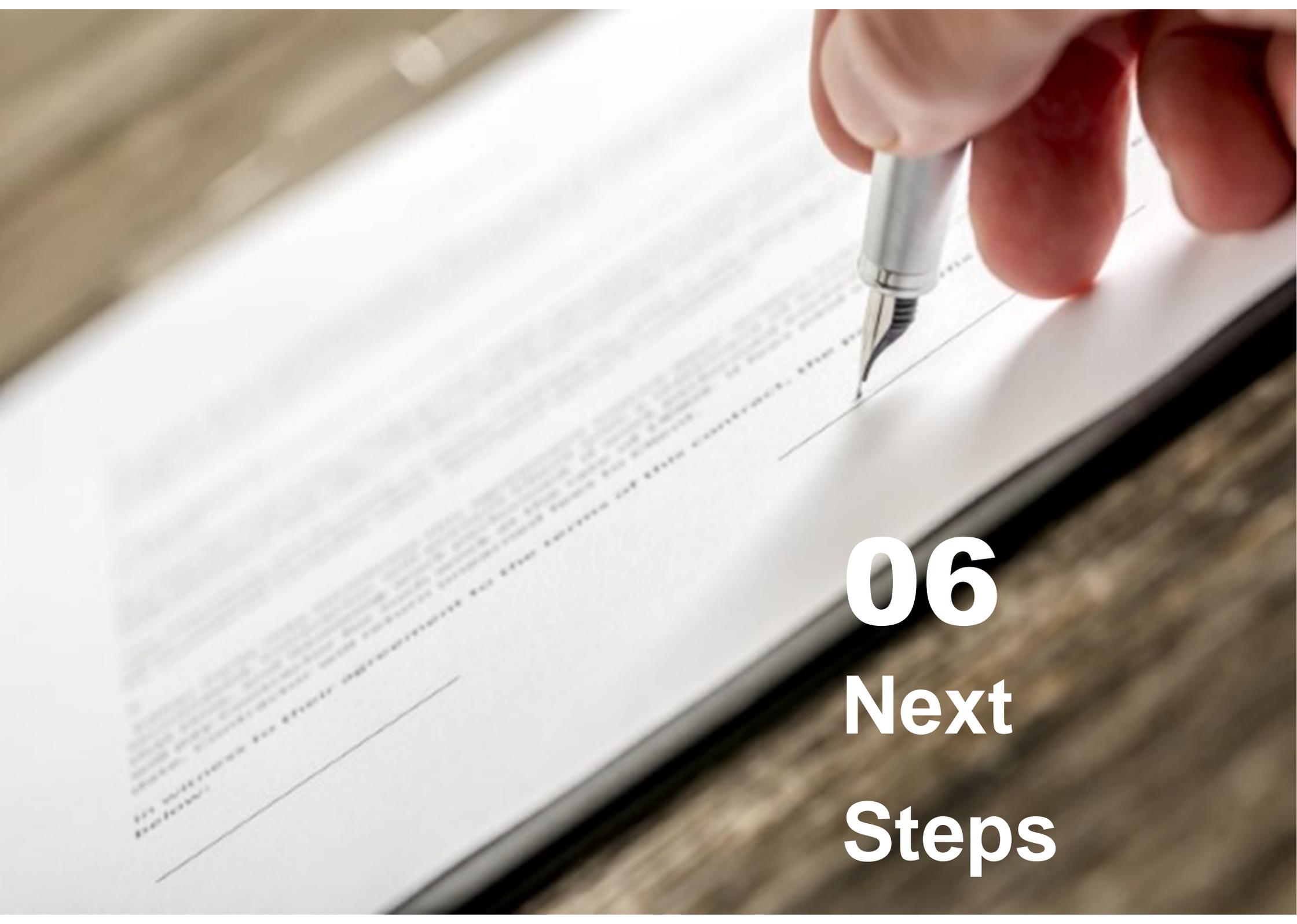
05

Sanctions and liability



Sanctions and liability

- No additional civil liability
- Establishment of a control body at the **Federal Office of Economics and Export Control** (Bundesamt für Wirtschaft und Ausfuhrkontrolle - BAFA)
- **Fines** for violations:
 - In principle: fine of up to EUR 800,000
 - For companies with more than EUR 400 million annual turnover: fine of up to 2% of worldwide turnover
 - Exclusion from public contracts for a period of up to three years if a fine of at least EUR 175,000 has been imposed
- **German trade unions and non-governmental organisations** can sue German employers in German courts in the interests of employees of foreign companies.

A close-up photograph of a hand holding a silver fountain pen, writing on a document. The document is slightly out of focus, showing some text and lines. The background is a wooden surface. The text '06 Next Steps' is overlaid in the bottom right corner.

06
Next
Steps

Next steps

- **Supply chain analysis**: Am I affected as a company or as a supplier?
- Classification of suppliers into **risk groups**
- **Background check** of suppliers
- **Informing** suppliers about new requirements
- Development of a **Code of Conduct** for suppliers
- Review and adaptation of the existing **risk management system**
- **Training** of management and compliance officers
- Integration of **subsidiaries** into internal compliance and risk management
- Adjustment of **supply contracts**
- Preparation of **documentation for risk analysis**



The time until
1.1.2023
should be used
for preparation!

Your contact



Dr Sandra Link LL.M.
Partner
Corporate / M&A
T +49 69 505029 308
M +49 152 5681 5540
sandra.link@eu.kwm.com

Dr Sandra Link is a lawyer in the corporate department of King & Wood Mallesons Rechtsanwalts-gesellschaft mbH. Ms Link provides comprehensive advice on M&A transactions and all aspects of commercial and corporate law. She has extensive experience advising Chinese investors and has worked as a secondee in our Beijing office. She specialises in domestic and cross-border acquisitions, public takeovers, joint ventures and corporate reorganisations. She also advises international clients on cross-border commercial relationships.

Ms Link studied law at the University of Trier. She is an LL.M. graduate of Columbia Law School, New York, and received her doctorate from the University of Trier.

Prior to joining the King & Wood Mallesons network in 2014, Ms Link was a senior associate at another highly regarded international law firm in Frankfurt am Main

Disclaimer

King & Wood Mallesons refers to the network of firms which are members of the King & Wood Mallesons network. Legal services are provided independently by each of the separate member firms. No member firm nor any of its partners or members acts as agent for any other member firm or any of its partners or members. No individual partner or member in any member firm has authority to bind any other member firm. See kwm.com for more information.

King & Wood Mallesons Rechtsanwaltsgesellschaft mbH is a German limited liability company having its seat in Frankfurt am Main. The company is registered in the commercial register of the local court of Frankfurt am Main at no HRB 107543 and admitted to the Frankfurt bar (Rechtsanwaltskammer Frankfurt am Main). Managing directors are Christian Cornett, Rudolf Haas, Rüdiger Knopf and Michael Roos. King & Wood Mallesons Rechtsanwaltsgesellschaft mbH is a member firm of the King & Wood Mallesons network. See www.kwm.com for more information.