

Düsseldorf Model Clause for Corporate and Post-M&A Disputes

For contracts in areas falling under the jurisdiction of the Commercial Court Senate for corporate and post-M&A disputes of the Higher Regional Court of Düsseldorf (Oberlandesgericht Düsseldorf), the parties may, for example, use the below non-binding draft jurisdiction clause.

The Commercial Court Senate for corporate and post-M&A disputes of the Higher Regional Court of Düsseldorf has jurisdiction over the disputes within the meaning of Section 1(2) sentence 1 no. 2 of the Commercial Court and Commercial Chambers Ordinance of the State of North Rhine-Westphalia of 1 April 2024 (NRWComCouChambVO), i.e.:

- disputes arising out of or in connection with the acquisition of an enterprise or of shares in an enterprise (Section 119b(1) sentence 1 no. 2 German Courts Constitution Act (GVG)).

The draft below is therefore suitable for any agreement on the acquisition of an enterprise or of shares in an enterprise, irrespective of whether the transaction constitutes a share deal, an asset deal or any other form of acquisition. It is also suitable for agreements related to the acquisition of an enterprise or of shares in an enterprise, including agreements entered into with third parties. This also includes ancillary agreements (e.g. Transitional Service Agreements, escrow agreements or agreements on the fiduciary holding of shares) and advisory agreements in connection with M&A transactions (e.g. with lawyers, auditors and other M&A advisers).

- disputes between a company and members of its management board or supervisory board (Section 119b(1) sentence 1 no. 3 GVG).

The draft below is therefore suitable for management board and managing director service agreements and other agreements between companies and members of their management board or supervisory board.

- disputes between entrepreneurs within the meaning of Section 14 German Civil Code (BGB) concerning corporate matters.

The draft below is also suitable for agreements concerning corporate matters, i.e. agreements that have a company as their subject matter or have a specific connection to a company, in particular shareholders' agreements, provided the parties are entrepreneurs within the meaning of Section 14 German Civil Code (BGB). This may also include agreements with third parties, such as escrow agreements, agreements on the fiduciary holding of shares or advisory agreements relating to corporate matters, including agreements with lawyers, auditors and management consultants.

Suggested Wording

(1)

The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement shall be Düsseldorf.¹

(2)

Provided that the required minimum amount in dispute (currently EUR 500,000 pursuant to Section 119b(1) sentence 1 GVG) is met, the Commercial Court at the Higher Regional Court of Düsseldorf shall have exclusive jurisdiction as court of first instance over any and all disputes arising out of or in connection with this Agreement.²

[(3) Optional:

The parties waive the translation of English-language documents submitted as exhibits to pleadings or otherwise introduced into the proceedings.

Alternatively:

The parties agree that the proceedings shall be conducted in English. The parties waive the translation of German-language documents submitted as exhibits to pleadings or otherwise introduced into the proceedings.

(4)

The parties undertake to file any procedural motions that may be required in order to give effect to the jurisdiction and conduct of the proceedings provided for in the preceding paragraphs.]

Comments on ¹

The proposed wording above means that, for disputes involving an amount in dispute of less than EUR 500,000 but more than EUR 10,000, the Regional Court of Düsseldorf (Landgericht Düsseldorf) will have jurisdiction as court of first instance. Already since 1 January 2022, the Regional Court of Düsseldorf has had a highly specialised civil division (Zivilkammer) and a highly specialised commercial division (Kammer für Handelssachen) for disputes arising from M&A transactions.

If the parties agree, pursuant to Section 184a(3) sentence 1 GVG, that the proceedings are to be conducted in English, the relevant “Commercial Chamber” of the Regional Court of Düsseldorf will have jurisdiction ex officio over corporate and post-M&A disputes involving an amount in dispute of less than EUR 500,000 but

more than EUR 10,000, without any provision to that effect being required in the jurisdiction clause (Section 2(2) no. 4 in conjunction with Section 2(3) no. 4(a) NRWComCouChambVO).

For disputes with an amount in dispute of up to EUR 10,000, the Local Court of Düsseldorf (Amtsgericht Düsseldorf) will generally have jurisdiction as court of first instance.

The first sentence of the above suggested wording presupposes that the parties meet the requirements of Section 38 German Civil Procedural Code (ZPO). If these requirements are not met, the first sentence must be deleted. Section 38 ZPO does not apply to an agreement on the jurisdiction of the Commercial Court.

Comments on ²

Pursuant to Section 119b(1) sentence 1 no. 1 GVG in its currently applicable version, disputes in the fields of intellectual property law, copyright law and claims under the German Unfair Competition Act (UWG) are excluded from the jurisdiction of the German Commercial Courts. Pursuant to Section 119b(1) sentence 4 GVG in its currently applicable version, jurisdiction of the German Commercial Courts may not be provided for actions to set aside a shareholders' or other corporate resolutions, proceedings within the meaning of Section 71(2) no. 4 GVG, or proceedings under Section 375 FamFG. Where appropriate, the two preceding sentences may be added to the model clause for declaratory purposes.

General Comments

Whether international jurisdiction may be agreed upon must be assessed on a case-by-case basis under the applicable provisions, such as the Brussels Ia Regulation, the Lugano Convention or the Hague Choice of Court Convention.

The above draft may also be used, with appropriate modifications, as a drafting aid for jurisdiction agreements entered into after a dispute has arisen.

The above draft is merely a suggested wording. This suggested wording and the above comments do not constitute or replace legal advice in individual cases. No liability is assumed for the accuracy or completeness of the draft and the above comments, or for their suitability in any individual case.

A draft jurisdiction clause which, in our view, is likewise generally suitable for contracts in areas falling under the jurisdiction of the Commercial Court Senate for corporate and post-M&A disputes of the Higher Regional Court of Düsseldorf is provided by the Federal Association of Corporate Lawyers (Bundesverband der Unternehmensjuristen, BUJ) on its website <https://buj-verband.de/wp-content/uploads/2026/04/Commercial-Courts-Deutschland.pdf>. The BUJ's suggested wording also does not constitute or replace legal advice in individual cases, and no liability is assumed for its accuracy, completeness, or suitability in any individual case.