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# Manager Liability in Germany

von

Dr. Daniel Gubitz, Dr. Tobias Nikoleyczik, Ludger Schult

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Director Liability of Members of Management and  
Supervisory Boards of German Companies

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## Preface

In recent years, manager (or director) liability has become one of the most dynamic fields in German business law. Increasing numbers of claims against members of management and supervisory boards of Stock Corporations and managing directors of Limited Liability Companies pose a particular concern for managers. As a result, there has been an enhanced interest in manager liability in and outside the legal community.

There are a number of German-language publications that provide an excellent overview of manager liability in Germany. Yet given the increasingly international backgrounds of managers serving in German companies, there is a noticeable need and demand for English-language publications that cover this topic. This book, by answering the typical questions surrounding manager liability in Germany, will prove itself to be an invaluable reference in particular for foreign managers of German corporations or candidates for such positions, as well as the foreign attorneys and in-house lawyers advising them.

In this context, this book provides an overview of the general legal principles regarding manager liability in Germany, the legal framework of the different types of companies in which managers are typically active, measures to limit liability exposure, procedural aspects and remedies, as well as the most relevant specific scenarios of manager liability in practice. This analysis is complimented by a glossary of the frequently used terms in the context of manager liability, as well as by English and German versions of the applicable legal provisions.

For purposes of better legibility only, this book uses the male gender pronoun when referring to a manager.

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*March 2012*

*The authors*



## Abbreviations

2008 MoMiG Reform Act	Act for the Modernization of the GmbHG and the Prevention of Misuse ( <i>Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen</i> )
ABl.	Amtsblatt der Europäischen Union ( <i>Official Journal of the European Union</i> )
Abs.	Absatz ( <i>paragraph</i> )
AG	Stock Corporation ( <i>Aktiengesellschaft</i> )
AGB	Standard form contracts ( <i>Allgemeine Geschäftsbedingungen</i> )
AktG	Stock Corporation Act ( <i>Aktiengesetz</i> )
AO	German Tax Code ( <i>Abgabenordnung</i> )
BGB	Civil Code ( <i>Bürgerliches Gesetzbuch</i> )
BGH	Federal Court of Justice ( <i>Bundesgerichtshof</i> )
BörsG	Stock Exchange Act ( <i>Börsengesetz</i> )
Bundesgesetzbl.	Bundesgesetzblatt ( <i>Federal Law Gazette</i> )
BVerfG	German Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> )
Code	German Corporate Governance Code ( <i>Deutscher Corporate Governance Kodex</i> )
D&O insurance	Directors' and Officers' liability insurance
e.g.	for example
e.V.	Registered Association ( <i>eingetragener Verein</i> )
EC	European Communities ( <i>Europäische Gemeinschaften</i> )
EEIG	European Economic Interest Grouping ( <i>Europäische wirtschaftliche Interessenvereinigung</i> )
EG	Europäische Gemeinschaften ( <i>European Communities</i> )
EStG	Income Tax Act ( <i>Einkommenssteuergesetz</i> )
et seqq.	and the following
etc.	et cetera
EUR	Euro
EWIV	European Economic Interest Grouping ( <i>Europäische wirtschaftliche Interessenvereinigung</i> )
GbR	Civil Law Partnership ( <i>Gesellschaft bürgerlichen Rechts</i> )
GDV	Association of German Insurers ( <i>Gesamtverband der Deutschen Versicherungswirtschaft e.V.</i> )
GmbH	Limited Liability Company ( <i>Gesellschaft mit beschränkter Haftung</i> )
GmbHG	Limited Liability Companies Act ( <i>Gesetz betreffend die Gesellschaften mit beschränkter Haftung</i> )
Government Commission	Government Commission on the German Corporate Governance Code ( <i>Regierungskommission Deutscher Corporate Governance Kodex</i> )
GWB	Act against Restraints on Competition ( <i>Gesetz gegen Wettbewerbsbeschränkungen</i> )
HGB	Commercial Code ( <i>Handelsgesetzbuch</i> )
i.e.	that is
IFRS	International Financial Reporting Standards



## VIII

InsO	Insolvency Code ( <i>Insolvenzordnung</i> )
IPO	Initial Public Offering
KG	Limited Partnership ( <i>Kommanditgesellschaft</i> )
KWG	Banking Act ( <i>Gesetz über das Kreditwesen</i> )
MitbestG	Co-Determination Act ( <i>Gesetz über die Mitbestimmung der Arbeitnehmer</i> )
no.	number
Nr.	Nummer ( <i>number</i> )
OHG	General Commercial Partnership ( <i>offene Handelsgesellschaft</i> )
OWiG	Administrative Offenses Act ( <i>Ordnungswidrigkeitengesetz</i> )
p.	page
para.	paragraph
RVG	Statutory fee schedule ( <i>Rechtsanwaltsvergütungsgesetz</i> )
SE	European Company ( <i>Societas Europaea</i> )
SEAG	SE-Implementation Act ( <i>Gesetz zur Ausführung der Verordnung über das Statut der Europäischen Gesellschaft</i> )
SE-Regulation	Council Regulation on the Statute for a European Company ( <i>SE-Verordnung</i> )
SMEs	Small- and medium-sized enterprises
SPE	European Private Company ( <i>Societas Privata Europaea</i> )
StGB	Criminal Code ( <i>Strafgesetzbuch</i> )
StPO	Criminal Procedure Code ( <i>Strafprozeßordnung</i> )
TEU	Treaty on the Functioning of the European Union (Treaty of Lisbon)
U.K.	United Kingdom
U.S.	United States
UG	Entrepreneurs Company ( <i>Unternehmergesellschaft</i> )
UmwG	Transformation Act ( <i>Umwandlungsgesetz</i> )
UStG	Value Added Tax Act ( <i>Umsatzsteuergesetz</i> )
VerkaufsprospektG	Prospectus Act ( <i>Verkaufsprospektgesetz</i> )
VVG	Insurance Contract Act ( <i>Versicherungsvertragsgesetz</i> )
WpHG	Securities Trading Act ( <i>Wertpapierhandelsgesetz</i> )
WpPG	Securities Prospectus Act ( <i>Wertpapierprospektgesetz</i> )
WpÜG	Securities Acquisition and Takeover Act ( <i>Wertpapiererwerbs- und Übernahmegesetz</i> )
ZPO	Civil Procedure Code ( <i>Zivilprozeßordnung</i> )

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