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Research project regarding money lending business regulations in Germany and the implementation of laws and regulations regarding money lending businesses in that jurisdiction

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1. Regulations and restrictions imposed on licensed money lending business operator in Germany[1]

1.1 Outline of the money lending business regulation		
Outline of the money lending business licensing and operating requirements	**I. Financial supervisory law:** Primary lending in Germany constitutes credit business, a **banking business** requiring a **banking licence** from German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "**BaFin** provided such business is pursued on a scale which requires commercially organised business operations. Please note that the aggregated amount of the total loans granted can play a role in the question of whether granting of loans qualifies as such licensable credit business. BaFin considers as a general rule the granting of loans as a licensable business (irrespective whether it actually requires commercially organised business operations) if the number of loans or the volume of the total loan amount exceeds certain thresholds[2]. The mere holding or acquisition of a *fully funded* loan/facility is, pursuant to the BaFin guidance notice on lending business, generally not licensable in Germany. However, a banking licence will be generally required, inter alia if a loan is amended in a way which would require a new credit decision by the lender or in case further payments. Whilst the requirement for a licence will depend on the facts in each particular case, a (transferee) lender that does not hold a banking licence or passport (anymore) generally cannot agree to amendments which have the effect of:	German Banking Act (*Kreditwesengesetz* – "**KWG**") BaFin guidance notice on lending business (*BaFin Merkblatt Kreditgeschäft* of 8 January 2009 – "**Lending Guidance Notice**") Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms dated 26 June 2013 ("**CRR**") German Regulation concerning Reports and the Submission of Records

[1] Please generally note that the following report contains under the below no. 1 (*Regulations and restrictions imposed on licensed money lending business operator in Germany*), no. 2 (*Transaction Lending and any other online lending*), no. 3 (*Multiple-debt problem (i.e. too much borrowing problem*) *as a result of high-interest lending*) and no. 4 (*Special treatments given to small and medium enterprises lending ("SME Lending")*) the most significant aspects only and does not intend or purport to reflect all possible scenarios or legal aspects. In particular, this report does not contain an in-depth description or analysis of the German rules on standard business terms (*Allgemeine Geschäftsbedingungen*) within the meaning of Sections 305 of the German Civil Code (*Bürgerliches Gesetzbuch*). Furthermore, this report does not include or make any reference to any rules relating to real estate consumer loans (*Immobiliar-Verbraucherdarlehensverträge*) within the meaning of Sections 491 para.3 of the German Civil Code (*Bürgerliches Gesetzbuch*). As regards financial supervisory law the report contains the most significant aspects. It is not intended to reflect all possible scenarios. The latter may require an in-depth analysis of the circumstances of the individual case. In particular, this report does not include an in-depth description of the organisational and risk management requirements of financial institutions as expressed, in particular, in the circular of the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) on minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement – "***MaRisk**").

[2] According to the Lending Guidance Notice of BaFin the such thresholds are in case of the provision of only credit business more than 100 loans or an aggregated loan amount of EUR 500,000 (and at least 21 loans). If credit business is pursued in connection with deposit business the thresholds are 25 cases (both deposit agreements and loans; 25% of the credit cases being counted towards the limit) or a total volume of loans and deposits of EUR 12,500 (with the total volume of loans being counted towards the limit at 2.5%).

	• extending the loan maturity (assuming there is no extension option in the facility agreement). In contrast, the simple deferral (*Stundung*) of a repayment obligation will not trigger a licence requirement, if the other contractual obligations (such as loan amount and/or interest rate) are not amended. • increasing the loan amount (in which circumstances BaFin treats the amendments as being tantamount to the making of a new loan); or • amending the interest rate applicable to the loan (unless the loan agreement provides for the parties to agree the relevant interest rate for a specified period and provided the remainder of the conditions for the loan remain unchanged) Generally, any amendment of essential terms is being considered as triggering a licensing obligation. On the other hand, if the right to request such amendment was already set forth in the original agreement, one may argue, in the individual case, that such an amendment does not trigger licensing requirements. The above consideration only apply if the activities or a significant part thereof are pursued in Germany. For the sake of completeness it should be mentioned that with respect to cross-border setups the principles of a Bafin guidance notice on cross-border business from 2005 apply. Credit business may also be pursued in German on the basis of a EU passport by a credit institution that is duly licensed for credit business in an EU member state. **<u>Authorisation procedure</u>** The licence application has to be submitted to BaFin and to the German Federal Bank (*Bundesbank*) in writing. The application has to include – inter alia – the following: *<u>General information on the applicant:</u>* E.g. company name, legal form, business purpose, declaration on the scope of business (i.e. the envisaged banking activities/financial services), formation documents and articles of association and register excerpts.	under the Banking Act (*Anzeigeverordnung* – "**AnzV**") Bafin guidance notice on cross-border business (*Merkblatt zur Erlaubnispflicht von grenzüberschreitend betriebenen Geschäften* of 5 April 2005 – „**Cross-Border Notice**")

	Capital requirements: Initial capital requirements: The amount of the initial capital required depends on the banking activities or financial services for which the licence is applied. The amount varies from EUR 50,000 to EUR 730,000 for institutions which carry out investment services. For credit institutions which carry out deposit and lending business and therefore fall under Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms dated 26 June 2013 ("**CRR**"), the initial capital must be at least in the amount of EUR 5 million. *Managing directors* In general, an Institution must have at least two managing directors. The managing directors must be qualified for the management of an institution, i.e. they must have sufficient theoretical and practical knowledge with respect to the relevant banking business or financial services as well as managerial experience. The managing directors have to be qualified for management and have to devote sufficient time to the performance of their role. Fit and proper information and documents have to be filed with the application (e.g. police certificates, declarations of good conduct, detailed CVs). *Business plan* The applicant has to submit a detailed business plan to the BaFin. This business plan has to include inter alia the following information: • Detailed description of the planned business and an explanation as to the intended development of the business. • Projected balance sheets and profit and loss accounts for the first three full financial years after the commencement of the business operations and planning figures for the compliance with key indicators including solvency and liquidity regime. • Drafts of customer contracts, management contracts, powers of attorney over accounts and standard terms and conditions of business, insofar as they have been drafted already. • Organisational structure of the Institution which must also be shown in a chart. The responsibilities of the managing directors must be set out therein.	

	• Information on internal procedures/proper internal control procedures in order to ensure a proper business organisation, appropriate internal control system and suitable arrangements for managing, controlling and monitoring risks to ensure that its risks will be sufficiently monitored at any time. *Shareholders control* In order to assess the trustworthiness of the owners who hold a significant participation in the applicant, all shareholders have to make a notification to BaFin and to Bundesbank pursuant to sec. 2c para 1 KWG. A significant shareholder is any shareholder which holds - directly or indirectly - at least 10% of the shares or voting rights of the applicant. The notification procedure is designed for those cases where a person or an undertaking intends to acquire a significant participation in a bank or financial services provider. However, BaFin applies sec. 2c KWG also in the case of the granting of a licence. BaFin considers that the situation of granting a licence is comparable to the situation of the acquisition as in both cases the shareholders become shareholders of a regulated institution for the first time. Information and documents to be filed include inter alia: • Information of the number of direct or indirect shareholders, the amount of their interests and a structure chart thereof. • Proof of the identity and existence of the shareholders • A recent, complete and sound description of the business activities of the notifying party • Information on the managing directors or partners • A group structure chart • Annual accounts *Time frame:* According to KWG, the BaFin must notify the applicant within a period of six months after the filing of the complete application file whether a banking licence will be granted or not, but this period might be extended.	

	<u>Ongoing operating requirements</u> Once authorised, a firm must ensure that its business is run in full compliance with the regulatory regime. This includes: • Ensuring that the business organisation, systems and controls and governance structure are effective and appropriate for the business • Complying with all of the relevant conduct of business rules including credit decision requirements • Complying with the ongoing regulatory capital requirements (pursuant to Articles 92 to 386 CRR • Complying with the ongoing regulatory reporting requirements Please note that this does not reflect a full and comprehensive description of the ongoing operational requirements. **II. General rules on good conduct** Under German civil law, there are no firm operating requirements applying to lending business. As a general rule, German civil law requires that no legal act (*Rechtshandlung*) violates a statutory prohibition (*gesetzliches Verbot*) and any rights and legal acts are performed in good faith (*Treu und Glauben*) as well as in accordance with *bonos mores* (*gute Sitten*). **III. Special rules for Consumer Loans** All loan agreements entered into with a borrower which is a consumer (*Verbraucher*), a private individual that enters into a transaction with the lender for purposes that predominantly are outside its trade, business or profession (each a "**Consumer**") qualify as so-called consumer loan agreements (*Verbraucherdarlehensverträge*) (each a "**Consumer Loan**"). For Consumer Loan additional transparency requirements set forth under the BGB in conjunction with the EGBGB apply: • **Pre-Contractual Information (*SECCI*)**	• Sections 13, 134, 138, 242, 305 to 311, of the German Civil Code (*Bürgerliches Gesetz-buch*, "**BGB**") • Sections 491 to 505e BGB • Article 247 of the Introductory Code to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche,* "**EGBGB**") • Section 491a BGB

	A lender is required to provide the relevant Consumer with certain information in text form prior to entering into the relevant loan agreement. The lender may satisfy such pre-contractual information requirements by using a duly replicated and completed statutory Standard European Consumer Credit Information (the "**SECCI**"). The SECCI generally aims to provide the relevant Consumer borrower with an overview on all material provisions contained in the relevant loan agreement including, but not limited to, ○ the effective annual interest rate (*effective Jahreszins*) including all components relevant for its calculation (including the relevant interest margin (*Zinsmarge*) of the lender); ○ any further costs (*Kosten*) or fees (*Gebühren*) which the borrower has to bear (if any) and the basis on which such costs or fees are calculated on; and ○ certain information on intermediaries (*Vermittler*) including the remuneration of such intermediary; and ○ the calculation method for the lenders' compensation for early repayment of the loan (*Vorfälligkeitsentschädigung*). Any non-compliance of a lender with the SECCI may trigger damage claims of the Consumer. • **Mandatory Statements (*Pflichtangaben*)** A Consumer Loan agreement needs contain so-called mandatory statements (*Pflichtangaben*) ("**Mandatory Statements**"). Mandatory Statements comprise, *inter alia*: ○ the total overall amount (*Gesamtbetrag*) and any other cost (*sonstige Kosten*); ○ the effective annual interest rate (*effective Jahreszins*); ○ the net loan amount (*Nettodarlehensbetrag*); ○ the default interest (*Verzugszinsen*) or other costs resulting from a non-performance of the relevant borrower (*Verzugskosten*); and ○ the calculation method for the lenders' compensation for early repayment of the loan (*Vorfälligkeitsentschädigung*). If the Consumer Loan does not comply with such information requirements, is considered void.	• Section 492 BGB, Article 247 Section 6 to 13 EGBGB, pursuant to Section 494 para. 1 BGB

	Financial supervisory law considerations The requirements for authorisation are set out in the KWG, the Lending Guidance Notice and the AnzV. As credit business requires a banking license the license application requirements form the main market entry barrier (for details please see above). Pursuing licensable banking business without being appropriately licensed constitutes a criminal offense. Further, legal entities (which cannot be prosecuted under criminal law) may be prosecuted under the law of administrative offences and consequently may be fined. **Civil law considerations** Under German law, loan agreements are freely agreeable amongst the parties and, in principle, merely subject to the pricings of the market. In general, German law provides for no particular statutory limits on loan principle amounts, statutory maximum interest rates or lending periods. However, depending on the circumstances of the specific case, the following principles apply under German law: **I. Usury Limits (*Wucher*)** German courts have developed the concepts of stifling the economic freedom (*Knebelung*) and endangering creditors' interests (*Gläubigergefährdung*). According to such concepts, German loans may be held to be invalid if their terms place oppressive restrictions on the other party's commercial freedom or if they mislead or have an unduly negative impact on the other party's creditors. As a general rule, loan interest rates should not exceed the effective interest customary for comparable loans[3] granted by the relevant lender or competitors by 100 per cent or 12 percentage points (*Prozentpunkte*) (for further details see the below).[4] **II. Default interest rate (*Verzugszinsen*)** The statutory default rate of interest (*Verzugszins*) is five (5) percentage points per year above the base rate (*Basiszinssatz*). According to Section 247 BGB, the basic rate of interest (*Basiszinssatz*) is periodically adjusted and currently stated to be minus (-) 0.88 percentage points (as of 1 July 2019).[5] If a Consumer is not party to a loan, the statutory default interest rate is eight (8) percentage points above the basic rate of interest.	• Sections 138, 242 BGB • Section 288, 247, 512, 497 BGB

	The parties may generally agree on higher default interest rates (except in case of Consumers) and the lender may also claim further compensation if it is able to substantiate that it has suffered further damage from the borrower's non-payment. Agreements on lump-sum claims for damages or contractual penalty for default bear the risk of being considered to be invalid under German laws on standard business terms (*Allgemeine Geschäftsbedingungen*). **III. Interest rates on overdrafts (*Kontoüberziehungszinsen*)** German civil law provides for special rules applying to so-called granted overdrafts (*vereinbarte Überziehungen*) and tolerated overdrafts (*geduldete Überziehungen*) set forth under Sections 504 *et seqq.* BGB. Such overdrafts may, *inter alia*, require the relevant lender under	• Sections, 504, 505 BGB

[3] Please note that there are no specific rules stipulating or indicating overall minimum or average loan interest rates. As interest rates are, in principle, freely agreeable amongst the parties, they are, in general, subject to the pricings of the market only and may, thus, depend on a variety of individual factors such as the requested loan amount, the term of the relevant loan, the creditworthiness of the relevant borrower and/or the value of the collateral securing the relevant facility (if any). As a consequence, the relevant interest rate customary for comparable loans may have to be determined on a case-by-case basis. A German court may, thus, base its rulings on expert opinions (*Sachverständigengutachten*) or reliable statistics such as the so-called MFI-Zinsstatistik published by the German Central Bank (*Deutsche Bundesbank*) on a regular basis regarding the interest rates applied by domestic banks (MFIs) in Germany and the related volumes of euro-denominated deposits and loans vis-à-vis households and non-financial corporations domiciled in euro-area countries which may be downloaded via the following links (status: 31 October 2019): (i) https://www.bundesbank.de/resource/blob/615022/35a8108c7655c4d5463d05c56989e24d/mL/s510atgv-data.pdf (focusing on average interest rates for private households between 2003 and 2019); and (ii) https://www.bundesbank.de/resource/blob/650658/a0e6609077ab660a9282a556f69d900e/mL/s510atsuhde-data.pdf (focusing on interest rates for private households and non-financial corporations in the previous year (September 2018 to September 2019) only).

[4] For the avoidance of doubt, the term "effective interest rate" (*effektiver Zinssatz*) is the percentage rate of charge which is applied on a particular loan. In the below context of Consumer Loans, the effective annual interest rate (*effectiver Jahreszins*) represents the total amount of costs (*Gesamtkostenbetrag*) imposed by the lender to the borrower. Even though all components on which the calculation of the relevant effective annual interest rate is based upon should, in general, be disclosed to the relevant Consumer (as further specified below), the relevant lender may still determine the amount of each such components at its discretion insofar as the total amount of costs (represented by the relevant effective interest rate which such a lender imposes to a borrower) is not twice the effective interest rate which other lenders or the market customarily charges in comparable circumstances or exceeds such rate by 12 percentage points – examples:

(i) Where the effective interest rate customary for comparable loans would be 2 percentage points, the parties may be allowed to apply an interest rate of up to 3,9 percentage points; and

(ii) Where the effective interest rate customary for comparable loans would be 13 percentage points, the relevant parties were not allowed to double such rate and apply an interest rate of up to 25,9 percentage points as this may exceed the effective interest customary for comparable loans by more than 12 percentage points. Hence, in such rather far-fetched scenario the parties were only able to apply an effective interest of up to 24.9 percentage points "only".

subject to, in each case of (i) and (ii), the further circumstances in the individual case and, in particular, the intention of the relevant lender when imposing the relevant interest rate (see under 1.3 (*Maximum rate of Interest regulations*) no. II. (*Subjective element: "Reprehensible Intent" (verwerfliche Gesinnung)* below).

[5] Please note that the basic rate of interest (*Basiszins*) set forth under Section 247 para. 1 BGB changes on 1 January and 1 July each year by the percentage points by which the reference rate (*Bezugsgröße*) has risen or fallen since the last change in the basic rate of interest. The reference rate is the rate of interest for the most recent main refinancing operation (*Hauptrefinanzierungsoperation*) of the European Central Bank before the first calendar day of the relevant six-month period. Following such dates, according to Section 247 para. 2 BGB, the German Federal Bank (*Deutsche Bundesbank*) announces the effective basic rate of interest in the Federal Gazette (*Bundesanzeiger*) without undue delay (published online under: https://www.bundesbank.de/de/bundesbank/organisation/agb-und-regelungen/basiszinssatz-607820). Hence, even though stated to be 3.62 per cent. under Section 247 para. 1 BGB, as of 1 July 2019 the currently applicable basic rate of interest (*Basiszinssatz*) is minus (-) 0.88 per cent.

	a Consumer Loan to provide additional information via the SECCI and the Mandatory Statements. As regards the maximum interest rate which may be charged to a Consumer in such scenarios, generally, the same rules as set forth above regarding Consumer Loans apply. However, for tolerated overdrafts (*geduldete Überziehungen*), where the parties did not agree on specific overdraft interest rates in advance, the lender may be entitled to increased interest rates with a view to a higher default risk of the relevant Consumer. Any such rate which provides for a lump sum minimum fee (*Mindestentgelt*) runs the risk of being void. **IV. Compensation for early repayment of a loan (*Vorfälligkeitsentschädigung*)** As a general rule, a Consumer may (i) terminate a Consumer Loan where no time for repayment has been determined without adhering to a notice period or (ii) early repay such Consumer Loan at any time completely or in part. In case of early repayment by the Consumer borrower, the total overall costs (*Gesamtkosten*) is to be reduced by the interest and other charges dependent on the duration of the loans. The lender may subsequently require suitable compensation (*angemessene Vorfälligkeitsent-schädigung*) for the early termination (*i.e.* for the damage directly related to early repayment) if, at the time of such repayment, the relevant Consumer owes interest at a fixed rate (*gebundener Sollzinssatz*) which was agreed upon on conclusion of the relevant Consumer Loan. Any suitable compensation for early repayment of a Consumer Loan must, however, not exceed the following amounts: • one (1) per cent. of the relevant early repayment amount, or, if the period between the early and the agreed repayment is not more than one (1) year, 0.5 per cent. of the relevant early repayment amount; and • the amount of the interest (*Sollzinsen*) which the borrower would have paid in the period between the early and agreed repayment. Furthermore, the lender's right for compensation for early repayment is excluded if: • the repayment is effected with funds from an insurance policy concluded on the basis of a corresponding obligation in the loan contract in order to ensure repayment; or	• Sections 500, 501, 502 BGB, Section 6 para. 3 of the Price Indication Regulation (*Preisangabenverordnung,* "**PAngV**").

	• the contractual information regarding the term of the contract, the borrower's right of termination or the calculation of the compensation amount for early repayment of the loan is insufficient. **V. Compound interest (*Zinseszins*)** In general, a contractual provision obliging a debtor to pay interest on interest (*compound interest*) is void. **VI. Revocability of Consumer Loans** As regards Consumer Loans the following applies: • Statutory Revocation Right (*Widerrufsrecht*) A Consumer has a revocation right (*Widerrufsrecht*) and may, generally, revoke a Consumer Loan validly within a statutory revocation period of 14 calendar days. Upon such revocation, all payments and other performances which have so far been exchanged between the parties are generally to be returned. Whilst the Consumer may reclaim all instalments and interest already paid, the relevant lender is entitled to reclaim the loan amount paid to the Consumer. • Mandatory Revocation Information (*Widerrufsinformation*) The lender is obliged to provide specific information to the Consumer about such Consumer's right to revoke the relevant Consumer Loan; the law provides for a statutory revocation instruction template (*Widerrufsbelehrung*) (the "**Statutory Revocation Instruction Template**") which the relevant lender may use in order to ensure compliance with the relevant statutory requirements.[6] If a Consumer Loan does not comply with such information requirements due to:[7] ○ a lack of information on the revocation right; or	• Section 248 BGB • Sections 495, 355 BGB • Section 492 BGB in connection with Article 247 EGBGB;

[6] In addition, according to various decisions by German Federal Supreme Court (*Bundesgerichtshof*), the instruction on revocation rights has to be clearly visible (*deutlich gestaltet*) and accentuated in an unmistakable manner (*in unübersehbarer Weise hervorgehoben*) in order for a Consumer to be able to easily notice its right to revoke a Consumer Loan.

[7] If based on the Statutory Revocation Instruction Template, duly replicated and correctly completed, the Revocation Instruction would be assumed to be in line with the legal requirements and, thus, valid by operation of law (*Gesetzlichkeitsfiktion*).

	○ a lack of Mandatory Statements, the statutory revocation period would not commence and the relevant consumer would be entitled to revoke the relevant Consumer Loan at any time as no limitation period (*Ausschlussfrist*) exists.[8]	Annex 7 to Article 247 EGBGB
Name of supervisory authorities and outline of the supervising power exercised by the relevant supervisory authorities and relevant provisions thereon	The competent regulator for banking business, including credit business, are BaFin and the European Central Bank ("**ECB**"). The ECB is responsible for the authorisation of all credit institutions and also ongoing supervision. BaFin is both responsible for the prudential supervision and the organisational and conduct supervision. BaFin has extensive powers. • It has significant powers under the KWG to obtain information and to conduct or order investigations (with or without a specific cause). • It may also issue specific orders to regulated entities. • In case of severe and/or persistent violations of regulatory provisions BaFin may also revoke the license of a regulated entity. • It may in case of violations of regulatory provisions order the resignation of members of the board of directors of a regulated entity and may ban individuals from managing a regulated entity. • In case of an unlicensed entity pursuing licensable business, BaFin can order the entity to cease the activity and to wind down the business.	KWG
Recent developments and arguments to revise the above regulation	Not to the best of our knowledge.	

[8] The lender then has the possibility to cure such deficit by subsequently providing the missing or unclear information (Section 492 para. 6 BGB), whereby the revocation period (in such a case extended to one (1) month) will only start once the Consumer receives a set of amended loan documents complying with the statutory information requirements (Section 494 para. 7 BGB).

1.2 Loans subject to the money lending business regulations		
Loans subject to the money lending business regulations	Financial supervisory law regulations (e.g. regarding license requirements) apply both to consumer/retail loans and corporate loans. Please note that loans to an institution that is licensed to pursue deposit business are generally not considered as licensable credit business.	
Historical, political and legal background of the above that consumer/retail loans and corporate loans are differently regulated	With a view to financial supervisory law licensing requirements consumer/retail loans and corporate loans are not differently regulated. From a civil law perspective, the aforementioned legal regime on Consumer Loans generally follows consumer protection purposes pursued by the European and German legislators as well as established by rulings of German courts and/or the European Court of Justice.	
Recent developments and arguments to revise the above regulation	Not to the best of our knowledge.	
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	We are not aware of any publicly known incidents where BaFin has recently detected an avoidance/circumvention of specific rules or requirements applicable to licensed credit business. However, BaFin has already ordered the winding down of credit business if it determines that credit business is being conducted without the required license. Decision of BaFin are to be found here: https://www.bafin.de/SiteGlobals/Forms/Suche/EN/Expertensuche_Formular.html?cl2Categories_Format=Massnahme+Meldung&gts=dateOfIssueOrModification_dt+desc&documentType_=News&sortOrder=dateOfIssueOrModification_dt+desc&cl2Categories_Thema=UnerlaubteGeschaefte&language_=en	
1.3 Maximum rate of Interest regulations		
Usury limits or restrictions concerning interest rates under laws and regulations	**Usury Limits (*Wucher*)**: Section 138 BGB stipulates that a legal transaction (*Rechtsgeschäft*) is void if it is contrary to public policy or *bonos mores* (*sittenwidrig*). In general, a violation of *bonos mores* may result from either the contractual content or the specific circumstances under which the relevant contract is concluded, in each case, depending on an overall view which	• Section 138 para. 1 and 2 and Section 242 BGB

	also takes into consideration the parties' motivations and particular purposes for entering into the relevant contract. Against this background, the following criteria may not be considered conclusive but may serve as a general starting point to assess whether loan agreements violate Section 138 BGB: **I. Objective element: "Apparent Disparity" (*auffälliges Missverhältnis*)** Loan interest rates may, in particular, be void where a person is promised or granted pecuniary advantages which are clearly disproportionate to its performance under the relevant contract: • According to German case law, this may be the case if loan interest rates exceed the rates for comparable loans granted by the relevant lender or competitors by approx. 100 per cent or 12 percentage points (*Prozentpunkte*).[9] • However, for purposes of calculating the relevant proportions, it cannot be excluded that German courts may take further factors into consideration (such as the solvency (*Bonität*) of and/or the collateral (*Sicherheiten*) granted by the relevant borrower (see below)). **II. Subjective element*:* "Reprehensible Intent" (*verwerfliche Gesinnung*)** As an additional requirement, the relevant lender needs to act to a certain degree intentionally when including the relevant "disproportionate" interest rate into the loan. • This is assumed where the relevant lender intentionally exploits the predicament (*Ausbeutung einer Zwangslage*), the inexperience (*Unerfahrenheit*), lack of sound judgement (*Mangel an Urteilsvermögen*) or considerable weakness of will (*erhebliche Willensschwäche*) of the borrower (Section 138 para. 2 BGB). • In case the subjective requirements under Section 138 para. 2 BGB are not met, a loan contract may, according to German case law, still be rendered void under Section 138 para. 1 BGB if the relevant lender acts with so-called reprehensible intent (*verwerfliche Gesinnung*) which may be the case (i) where a lender takes advantage of the weaker position of the relevant borrower deliberately (*bewusst*) or (ii) where the lender is negligent (*leichtfertig*) as regards such position, provided that the relevant borrower is a Consumer.	

[9] Please note again that these figures are no firm barriers and may vary from case to case – *e.g.*, in case of a long-term loan concluded within a low-interest-phase a loan agreement may still not violate Section 138 BGB if the contractually agreed interest rate does exceed the effective interest rate customary for similar loans by 110 per cent.

	It should further be noted that where the relevant loan interest rates clearly exceed comparable interest rates, German courts may assume that the lender had reprehensible intent (*verwerfliche Gesinnung*). Under German civil law, there is no firm statutory maximum interest rate • For purposes of calculation, the prevailing view refers to the so-called key interest rate (*Schwerpunktzins*) under the respective business segment (*Geschäftssegment*) of the relevant monthly report (*Monatsbericht*) published by the German Federal Bank (*Deutsche Bundesbank*).[10] • In order to determine the overall "financial burden" of the relevant borrower, further indications may be taken in consideration such as additional application fees (*Antragsgebühren*), loan broker provision (*Kreditvermittlersprovision*), restructuring (*Umschuldungen*) or extension (*Kreditaufstockungen*) fees. • The overall risk which the relevant lender bears may also be taken into consideration for purposes of comparing the relevant loan with other loans granted by such a lender or a competitor. Against this background, the solvency (*Bonität*) of and/or the collateral (*Sicherheiten*) granted by the relevant borrower may be relevant (*e.g.*, a Consumer may be less solvent than a corporation and short-term loans where only subordinate collateral is provided may, in general, be riskier than long-term loans where first-ranking land charges are granted). Other than that, it cannot be excluded that a German court may apply a reduced level of objective criteria if the lender showed a high degree of reprehensible intent (*verwerfliche Gesinnung*) to take advantage of the situation of the borrower (cf. Section 138 para. 2 BGB).	• Section 138 BGB • Section 6 PAngV
Recent developments and arguments to revise the above regulation	Not to the best of our knowledge.	
Incidents detected by relevant authorities for an unlicensed lender to	We are not aware of any publicly known incidents where BaFin has recently detected an avoidance/circumvention of specific rules or requirements applicable to licensed credit	

[10] See footnote 3 above.

deliberately avoid and circumvent the above regulation	business. However, BaFin has already ordered the winding down of credit business if it determines that credit business is being conducted without the required license. Further to that, BaFin may also take regulatory actions based on significant and recurring violations of civil law provisions.	
1.4 Fees, costs and charges must be included in the calculation of annual percentage rates ("APR")		
Scope of and out of scope of the fees, costs, charges and any other money received by a lender ("**Fees, etc.**"), including concrete examples such as an upfront administrative fee, ATM usage fees, and replacement card reissuance fees	German civil law provides for no general rules as to which Fees, etc. need to be included into the calculation of the relevant APR except for Consumer Loans where the effective annual interest rate (*effektiver Jahreszins*) is, basically, the total amount of costs (*Gesamtkostenbetrag*) imposed to the relevant borrower comprising according to Art. 247 Section 3 para. 2 sentence 2 EGBGB in conjunction with Section 6 para. 3 PAngV the following calculation components: • the interest payable by the Consumer; and • any other costs (*sonstige Kosten*) (including costs in respect of any loan broker acting as intermediary (*Vermittler*) for the relevant lender (if any)) such as (i) costs for the opening and maintaining of relevant bank accounts, (ii) costs for payment instruments (*Zahlungsmittel*) which are used to carry out transactions on such bank accounts and to draw on the relevant Consumer Loan as well as (iii) other costs for payment transactions (*Zahlungsgeschäfte*), in each case of (i) to (iii), provided that the opening or maintenance of the bank accounts is a condition precedent for the granting of the relevant Consumer Loan; and (iv) costs for property valuation (*Immobilienbewertung*) (if any and, if relevant, for the granting of the relevant Consumer Loan). Except for the rules set forth in relation to Consumer Loans under the EGBGB and the PAngV, German law provides for no specific prohibitions on the costs or expenditures a lender is permitted to include in the APR offered to relevant borrowers. However, German courts have decided in the past based on Germans laws on standard business terms (*Allgemeine Geschäftsbedingungen*) that lump sum handling fee (*pauschalierte Bearbeitungsgebühr*) expressed as a fixed amount or a percentage of the net loan amount (*Nettodarlehensbetrag*) as a one-off payment (such fee, a "**Handling Fee**") in	• Art. 247 EGBGB • Section 6 PAngV • Sections 305 et seqq. BGB

	addition to the APR is invalid in standard business terms (*Allgemeine Geschäftsbedingungen*). Considering the above, when it comes to upfront administrative fees, it is assumed that the APR should include those types of fees. • According to Art. 247 Section 3 para. 2 sentence 2 EGBGB in conjunction with Section 6 para. 4 PAnGV, the following components are exempt from the above calculation: o Costs which the Consumer bears in the event of non-performance of its obligations (*Nichterfüllung seiner Verpflichtungen*) under the relevant Consumer Loan; o Costs of such insurances and other ancillary services which are not a condition precedent for the granting of the relevant Consumer Loan; o Costs (excluding the relevant purchase price) payable by the Consumer in respect of the purchase of goods (*Waren*) or services (*Dienstleistungen*) irrespective of whether the relevant Consumer Loan is a cash or consumer loan transaction (*Bar- oder Verbraucherdarlehensgeschäft*); o Fees for the registration of a transfer of ownership on property or similar right (*grundstücksgleiches Recht*) with the land register (*Grundbuch*) (if any); and o Costs for a notary public (if any). With regard to ATM withdrawal fees and card issuance fees, there are good arguments to assume that those types of fees can be imposed outside of interest, particularly, if opening an account is not condition precedent for the granting or disbursement of the loan and the relevant fees have been clearly and separately shown in the credit agreement or in any other agreement[11]. The same is true of replacement card reissuance fees, where borrowers are responsible for losing their cards.	• Section 6 in conjunction with and annex of the PAngV

[11] cf. Article 19(2) of Directive 2008/48/EC which states that "the costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer."

	According to Section 6 para. 2 PAngV, the effective annual interest rate (*effectiver Jahreszins*) shall be calculated in accordance with the formula and procedures set out in an annex to the PAngV which is generally based on Annex I of the Directive 2008/48/EC.	• Annex I of the Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
Recent developments and arguments to revise the above regulation	Not to the best of our knowledge.	
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	Not to the best of our knowledge - please note, however, that the relevant financial authorities in Germany are not obliged to disclose their decisions in each case. Please note, however, the competent administrative authority of the relevant German federal state in which the lender has its registered office may impose a fine of up to EUR 25,000 on each violation of the PAngV.	
1.5 Total loan amount restriction (volume restriction)		
Restrictions on the total loan amount per individual/entity borrower to which licensed money lenders may offer	The large exposure regime of CRR applies which limits the exposure to a client or group of connected clients to 25% of the eligible regulatory capital of the credit institution. Further, there are no fixed restrictions with a view to the total loan amount based on financial supervisory law. However, credit institution have to structure and organise their credit decision process in a way to assess the risks connected with a credit agreement. This also has to include factors of creditworthiness of the borrower which itself includes the debt-servicing capacity of the borrower. For the latter the income of the debtor is a parameter which has to be included in the assessment. We are not aware of any comparable provision. However, a lender is obliged to conduct creditworthiness tests under regulatory law as well as, in case of Consumers, under civil law and one might argue that a Consumer Loan with a total loan amount being clearly beyond the relevant borrower's capacities could be a breach of such civil law provisions.	KWG, CRR and the MaRisk • Sections 505a, 505b BGB

Recent developments to revise the above regulation	Not to the best of our knowledge.	
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	Not to the best of our knowledge.	
1.6 Special provisions for small-amount and short-term loans		
Other than those discussed above, other special provisions governing small-amount and short-term loans	From the perspective of financial supervisory law there are no special provisions for small-amount and short-term loans in Germany. Note, however, that according to (i) Section 491 para. 2 BGB, the legal regime set forth in respect of Consumer Loans (Sections 492 to 505e BGB) does not apply if (i) the net amount of the relevant loan (*Nettodarlehensbetrag*) is less than EUR 200 (Section 491 para. 2 no. 1 BGB) or (ii) the relevant loan principle is to be repaid within three 3 months and only small fees or costs are agreed (Section 491 para. 2 no. 3 BGB).	• Section 491 para. 2 no. 1 BGB
Recent developments and arguments to revise the above regulation	Not to the best of our knowledge.	
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	Not to the best of our knowledge.	

2. Transaction Lending and any other online lending

Current situation on whether or not there have been requests to relax or tighten the regulations from relevant stakeholders, and the responses to the above requests by relevant government agencies and Congress/Parliament	In respect of the aforementioned legal topics there are, to the best of our knowledge, no commonly known discussions going on which may lead to the particular assumption that material changes could be expected shortly. However, please note that, particularly, the area of Consumer Loans is mainly case law driven and subject to European legislative which is, generally, difficult to anticipate.	

3. Multiple-debt problem (i.e. too much borrowing problem) as a result of high-interest lending

Recent movement and discussions made within the government and Congress/Parliament	In respect of the aforementioned legal topics there are, to the best of our knowledge, no commonly known discussions going on which may lead to the particular assumption that material changes could be expected shortly. However, please note that, particularly, the area of Consumer Loans is mainly case law driven and subject to European legislative which is, generally, difficult to anticipate.	

4. Special treatments given to small and medium enterprises lending ("SME Lending")

Favourable treatments for the SME Lending including loans provided by governmental financial institutions, subsidies, favourable tax treatment	No favourable tax treatments – neither reduced tax rates nor extraordinary deductions from tax bases as well as direct tax benefits – will be granted to SME Lending entities. We are not aware of favourable treatment of SME lending from a financial supervisory law perspective. In terms only of the commercial terms offered to the SME, there are certain federal development banks as well as the Kreditanstalt für Wiederaufbau (KfW) which are able to lend money at special (subsidised) conditions, particularly interest rates or with very favourable commercial conditions.[12] They are bound, though, by the normal civil law procedures in this respect.	
Recent movement and discussions made within the government and Congress/Parliament	Not to the best of our knowledge.	

[12] Please note that the background of such favourable conditions are mostly political motivated serving, *inter alia*, environmental, technological and/or general economic purposes of the German state and may, thus, be first and foremost available to individuals and/or SME's situated in Germany – an English language overview of (i) KfW-financings for founders and companies may be found under the following link: https://www.kfw.de/inlandsfoerderung/Unternehmen/index-3.html; and (ii) KfW-offers for private customers may be found under the following link: https://www.kfw.de/inlandsfoerderung/Privatpersonen/index-3.html.