



<p>TAGLaw – Fall 2013 Conference in Munich</p> <p>Thursday, October 22, 2013; 3:00 p.m.</p> <p>Specialty Group: Litigation & ADR</p> <p>Statement by Dr. Franz Ludwig Heiss on</p> <p>Complex litigation matters including a German "class action" lawsuit</p> <p>— HEISS & PARTNER —</p>

<p>TAGLaw – Fall 2013 Conference in Munich</p>
<ul style="list-style-type: none"> • Kapitalanleger-Musterverfahrensgesetz (KapMuG) • „Capital Market Investor’s Model Proceeding Act“ <p>— HEISS & PARTNER —</p>

I. The origins of the KapMuG

- The first version of the KapMuG came into effect on November 1, 2005.
- It would have expired on October 30, 2012.
- In October 2012 the KapMuG was extended until October 30, 2020.
- At the same time some modifications to the KapMuG have been made.

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II. Applicability

Sec. 1 KapMuG

- (1) claims for compensation of damages due to false, misleading or omitted public capital market information,
- (2) claims for compensation of damages due to the use of false or misleading public capital market information or due to the omission of the clarification of the fact that a public capital market information is false or misleading,

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II. Applicability

- (3) claims for performance of a contract, which is based on an offer under the Wertpapiererwerbs- und Übernahmegesetz (WpÜG)* Securities Acquisition and Takeover Act.

* Details are dealt with in the Wertpapiererwerbs- und Übernahmegesetzangebots-verordnung (WpÜG-AngebV)

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Public Capital Market Information

- which are aimed at a multitude of investors and
- which relate to an issuer of securities, in particular
- Any communication regarding ad-hoc information (Sec. 15 Wertpapierhandelsgesetz (WpHG) or of the Securities Trading Act)
- Statements, overviews, talks, information at shareholder meetings regarding the situation of the company
- Financial Statements

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III. Initiation of the Model Proceeding

- 1) At least 10 individual claims
- 2) „Application for Model Case Proceeding“ (Musterverfahrens Antrag)
- 3) „Aims of Declaration“ (Feststellungsziele)
- 4) Complaint Registry, accessible to the public online

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III. Initiation of the Model Proceeding

- 5) „Order to Submit“ (Vorlagebeschluss)
- 6) transfer the matter to the respective Higher Regional Court/ Court of Appeal (Oberlandesgericht)
- 7) Suspension of all pending proceedings at the courts of first instance

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IV. Conduct of the Model Case Proceedings

Parties to the proceeding:

- the model plaintiff,
- the model defendant(s)
- interested parties (Beigeladene)

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IV. Conduct of the Model Case Proceedings

Further claimants can join the model proceeding in order to stop the period of limitation by filing their claim with the Higher Regional Court.

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V. Model Case Decision (Musterentscheid)

- The Higher Regional Court will render – upon oral hearing – a decision as a model decision (Musterentscheid)
- The model decision may be appealed by all parties including the interested parties.
- The appeal would have to be lodged with the Federal High Court (Bundesgerichtshof).

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- The proceedings of first instance will be recommended
- Each case will then be decided on an individual basis by the court of first instance

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