



## 1. Overview

1.1 Germany is a **federal** **parliamentary** **democracy** governed under the *Basic Law for the Federal Republic of Germany ("Basic Law")*, the *Constitution* of Germany. The *Basic Law* consists of 11 chapters which set out the rights of the German people and outline in considerable detail the political and legal system of Germany. In particular, the **President is the head of state** and the **Federal Chancellor** the head of government. The *Basic Law* also enshrines the principle of the tripartition of powers into the Executive, Legislative and Judicial Branches.

## 2. Executive Branch

2.1 In Germany, executive power is vested in the **Cabinet** formed by the **Federal Chancellor**<sup>1</sup> and other Ministers. The President only holds a ceremonial role with limited reserve powers. For example, he or she can dissolve the Parliament if the Federal Chancellor loses a motion of confidence and asks the President to do so.

### The President

2.2 Being the head of state, the President is empowered, among other things, to:

- (a) propose a candidate to the Bundestag (lower House of the German Parliament) for the office of Federal Chancellor;

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<sup>1</sup> In Germany, the Federal Chancellor is the head of government and equivalent to the Prime Minister in many other countries.

- (b) appoint and dismiss the Federal Chancellor, other Ministers and Federal judges;
- (c) dissolve the Bundestag upon the request from the Federal Chancellor if the Bundestag are not supportive of the Federal Chancellor's policies through the vote of confidence;
- (d) promulgate legislation that has been passed by the Legislative Branch;
- (e) represent Germany both at home and abroad, accredit and receive envoys, and conclude treaties with foreign states; and
- (f) pardon individual offenders and award honours on behalf of Germany.

2.3 The President is indirectly elected for a five-year term, renewable once, by the Federal Convention established solely for the presidential election. The Federal Convention is made up of all Members of the Bundestag and an equal number of representatives elected by the state legislatures.<sup>2</sup> The President is elected by secret ballot without any prior debate. If none of the candidates receives an absolute majority (i.e. more than half of the votes) in the first and second rounds of voting, a third round will be held. The candidate receiving the most votes in the third round will be elected. New candidates can also be nominated for the second and third rounds. Joachim Gauck, a former Lutheran pastor, was elected the President in March 2012. The next election will take place in 2017.

### The Federal Chancellor

2.4 The Federal Chancellor is the head of government. According to the *Basic Law*, the Federal Chancellor is empowered, among other things, to:

- (a) propose ministerial candidates for appointment by the President to the Cabinet;

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<sup>2</sup> The number of representatives which the individual states may send to the Federal Convention is calculated based on the population of each state.

- (b) chair the Cabinet and reconcile the difference among Ministers;
- (c) determine the government policies; and
- (d) command the armed forces in case the country is under attack.

2.5 To be elected as the Federal Chancellor, the candidate has to obtain an absolute majority of votes in the Bundestag in order to receive the formal appointment from the President. The election is often preceded by extensive negotiations between those parties that plan to govern together, and the leader of the party or coalition of parties winning the Bundestag election usually becomes the Federal Chancellor. Angela Merkel of the Christian Democratic Union has served as the Federal Chancellor since 2005, and she was re-elected for a third term in December 2013.

### **3. Legislative Branch**

3.1 The German Parliament is a bicameral legislature that consists of the elected Bundestag and the appointed Bundesrat (upper House of the German Parliament).

3.2 As a directly elected body, the Bundestag is empowered to:

- (a) enact and amend legislation;
- (b) elect the Federal Chancellor;
- (c) monitor the performance of the Federal government based on the rights and instruments set out in the *Basic Law*, including interpellations and debates on matters of public interest;
- (d) approve federal budget and scrutinize its implementation by the Federal government;
- (e) determine the amount of public funding that parties are entitled to receive under the *Act on Political Parties*; and

(f) elect the President together with the appointed Members from the state legislatures at the Federal Convention.

3.3 Another House of the German Parliament, the Bundesrat, is composed of appointed Members representing the 16 states of Germany at the national level. To counterweight the power of the Bundestag, the Bundesrat is granted with a number of legislative and scrutiny powers. For example, the *Basic Law* provides for the Bundesrat to make initial comments on the draft law before it is submitted to Parliament for scrutiny and vote. The Bundesrat may also veto a bill that substantially affects the state interests.

3.4 Since bills must be approved by both Houses to become legislation, the *Constitution* allows for convening a mediation committee with 16 Members of the Bundestag and an equal number of Members of the Bundesrat to resolve the difference between the two Houses.

### Election of the Bundestag

3.5 Election of the Bundestag is held once every four years unless it is dissolved earlier. The last election was held on 22 September 2013 in which Christian Democratic Union won 255 seats to become the largest party in the Bundestag. The next election will take place in 2017.

3.6 The Bundestag consists of 598 regular seats elected under a mixed electoral system. One half of the seats are elected directly in 299 constituencies based on a majority vote, while the other half are filled through the proportional representation system using the party list. The latter arrangement aims to allocate extra seats to political parties so that the make-up of the Bundestag reflects the support for these parties across the country.

3.7  In Germany, each voter has two votes: a first vote for an individual candidate in one of the constituencies, and a second vote to select the party list drawn up for each of the 16 states by the campaigning parties. If parties win more constituency seats than their share of seats determined by the party vote, they can keep the extra seats which are known as the "overhang seats". In case some parties obtain "overhang seats", "balance seats" are added to other parties to ensure complete proportionality of the share of votes for all

parties as stipulated under the *Federal Electoral Act* in 2013. Hence, the number of seats will be over 598 if there are "overhang seats" and "balance seats". In the 2013 election, there are four "overhang seats" and 29 "balance seats", bringing the total membership of the Bundestag to 631.

#### *Current division by parliamentary group*

3.8 As at 10 January 2015, the composition of the Bundestag by parliamentary group was as follows:

- (a) Christian Democratic Union/Christian Social Union Alliance (311 Members);
- (b) Social Democratic Party of Germany (193 Members);
- (c) The Left Party (64 Members); and
- (d) Alliance 90/The Greens (63 Members).

3.9 Norbert Lammert of the Christian Democratic Union has been the President of the Bundestag since October 2005.

#### Appointment to the Bundesrat

3.10 The Bundesrat is made up of 69 Members appointed by the state governments. In other words, the appointed Members concurrently hold office in the state and federal institutions. The number of seats for each state is based on the population size of a state, ranging from three to six seats. There is no definite term of office for Members of the Bundesrat. The state governments may recall or replace their representatives anytime.

#### *Composition of the Bundesrat*

3.11 The composition of the Bundesrat by state is as follows:

- (a) six Members for each of Baden-Württemberg, Bavaria, Lower Saxony and North Rhine-Westphalia;

- (b) five Members for Hesse;
- (c) four Members for each of Berlin, Brandenburg, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia; and
- (d) three Members for each of Bremen, Hamburg, Mecklenburg-Vorpommern and Saarland.

3.12 The presidency of the Bundesrat rotates annually among the 16 states, beginning with the Minister-President<sup>3</sup> of the most populous state. Volker Bouffier, the Minister-President of Hesse, has been the President of the Bundesrat since November 2014.

#### 4. Judicial Branch

4.1 Germany practises civilian system whose highest source of law is the *Basic Law*. The German court system has two levels comprising the federal and state courts. The Federal Constitutional Court is the highest court dealing with constitutional matters. At the federal level, there are also (a) ordinary courts dealing with criminal and civil cases, and (b) specialized courts dealing with administrative law, taxation matters, labour disputes and social security cases. At the state level, a number of courts operate with jurisdictions corresponding to those of the federal courts.

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<sup>3</sup> The Minister-President is the head of state and government of a German state; the office roughly corresponds to the governor of a U.S. state.

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