

# LP Magazine



## BUILDING THE FUTURE

New double-decker  
buses for Berlin

Volkswagen:  
Going electric

Leinemann assists with  
real estate restructuring

## Dear Readers,

This is not the usual brochure of a law firm. Instead of praising ourselves, we decided to present an overview of Leinemann Partner in the format of a magazine mainly written by journalists. We hope you find it entertaining to flip through the magazine and find interesting stories on our people, current and past projects and even non-professional activities of the firm, such as the cultural activities of the Leinemann Foundation.

Readers of this English issue will mainly look at the German legal market from an external point of view, possibly even from a different legal system. Leinemann Partner as Germany's largest law firm specialized in construction law and public procurement law with a focus on real estate law is a unique entity on the German legal market. With more than 100 lawyers in the six largest German cities, the firm is omnipresent in large projects all over the country, offshore in the Baltic and North Sea and also in international projects in Europe and abroad. And of course, we offer support in all major languages.

You are invited to get to know some of our people and a few of our projects. The title story also explores the history of the firm, founded at the start of the millennium.

Enjoy reading our magazine!

With kind regards,

Ralf Leinemann



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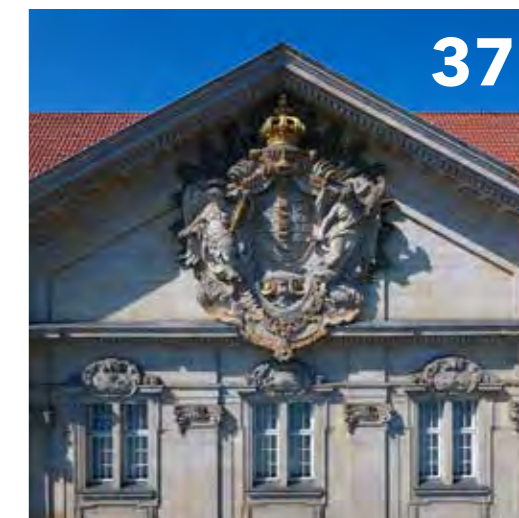
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**Publisher**  
Leinemann & Partner  
Rechtsanwälte mbB,  
Berlin, Düsseldorf,  
Frankfurt am Main,  
Hamburg, Cologne,  
Munich

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page 40-41 courtesy David Zwirner Gallery, VG Bild/Kunst

Friedrichstrasse in Berlin has once again become an artery of the city: lively and smart with a treasure of top addresses. The Leinemann office has been here from the firm's start in 2000

# Legal business Leinemann style

How Leinemann handles  
legal specialities



# V

Visitors to Leinemann's Berlin headquarters have to know where the library is situated. It is to be found in the 7th floor, hidden behind some corners, but it is in fact very special. There are elegant, fitted shelves with pillars and capitals filled with modern and also antiquarian legal literature, with a number of quiet cubicles and a tranquil atmosphere.

It all started here in Berlin. Right at the turn of the century, five lawyers founded a new law firm with Ralf Leinemann at the helm. Leinemann, then with eight years of experience as a lawyer, was an expert in construction and procurement law from the start and after searching for some

years, had brought together a group of legal experts who share his passion.

In 1999, his old law firm where he was a partner in Berlin sold itself to PricewaterhouseCoopers (PwC). For a short time Leinemann was then a partner at PwC, but after six months he decided along with his complete Berlin team to leave the group. »There were too many conflicts of interest«, he explains and refers to the fact that specialist lawyers in construction law are always somehow up against »the rest of the world«. That particularly applies when they act on behalf of the contractor of a construction contract. The office at Friedrichstrasse in Berlin was taken over again by Leinemann and, on January 1, the team started the new century under its own brand.

This step was in fact the start of a project with exceptional potential.

The uniting of West and East Berlin resulted in a city with one of the highest populations in the EU. The city was planned and constructed by the

## The firm, the people

public and private sectors and then, suddenly as fast as the wind, the city had to catch up with everything the Iron Curtain had prevented for forty years. Apart from that, in 1999, the move of the federal government and parliament to the city made Berlin permanently the capital of post-reunification Germany.

Given this fertile background, the young law firm was able to prosper as a start-up, whereby right from the start it was not limited to clients only from Berlin. The founders were no beginners, but had already proven themselves in projects all over the country, the best example being Ralf Leinemann himself. Prior to his move to Berlin, he had spent his first years as a lawyer in Düsseldorf from 1992. Immediately after the law firm was founded, Marc Hilgers moved from Düsseldorf to Berlin in 2000, whereas Oliver Schoofs had been a colleague in Berlin since 1997 already. The lawyer's business is a people's business and

therefore, it counts who knows who and how good your network is.

As soon as 2003 the list of Leinemann lawyers had already grown to twenty, new offices were established in Düsseldorf, Frankfurt am Main and Hamburg, which have each since developed to become leading addresses in their respective regions. The new offices were staffed from Berlin in such a way that today a real Leinemann spirit can be felt in all the offices. Leinemann Partner currently consists of roughly 100 lawyers with one notary in Berlin and another notary in Frankfurt am Main. In 2011, the law firm added an office in Cologne, and in 2017, Munich was added. Also, external lawyers were not taken on in these offices; instead, partners moved from Berlin to the new office locations and into new markets. This organic growth, derived from the original team, is second to none on the legal market in Germany.

100  
lawyers for construction  
and architectural law

As of today, co-founder Ralf Leinemann shares his partner status with more than 25 other colleagues. He occasionally comments on this with a smile and explains: »I don't call the shots round here anymore«. In fact, the activities of the law firm in Germany are controlled by a three-member managing board which is newly elected every two years. The board up to 2022 comprises Ralf Leinemann, Jochen Lüders and Jarl-Hendrik Kues.

Marc Hilgers, who was one of three managing partners up to 2020, came to the law firm six months after it was founded and has been a partner in Berlin since 2004. »Right from the start we wanted to use publications and seminars to establish a reputation for ourselves,« he explains and thus refers to a core tool in the successful marketing of the law firm. In doing

so, law firms with a focus on new legal areas have an advantage.

At that time, public procurement was a new field of law. In their efforts to ensure equal and fair conditions across Europe concerning the award of public contracts, since 1996 the EU had been working on guidelines which were implemented into German law by mid-1999. New elements were in particular the subjective rights for bidders and a new legal recourse against an improper contract award process. Bidders may now instigate procurement review

proceedings as a legal instrument, should they feel discriminated.

All of this opened up a legal market where Leinemann Partner quickly became well-known. An example is the publication of one of the first books on the new procurement law, which Ralf Leinemann already published at the end of 1999 when the new law came into effect. The title of the book is: »Die Vergabe öffentlicher Aufträge (The rules governing public procurement)«. The new procurement law also increased the need for legal advice for public sector clients. Today, legal support >>>

The library of the Berlin office is an oasis of cherry wood and legal literature. It feels good to be advised at the round table in the exclusive meeting room



Right at the turn of the century, five lawyers founded a new law firm with **Ralf Leinemann** at the helm



»One of the trends which pushes up the number of pages of construction contracts is the self-contained contract which often follows a pattern found in UK or US law.«  
**Marc Hilgers**



A **Leinemann team** visiting one of many tunneling projects

## The firm, the people

is essential to ensure a tender is legally compliant and to process extensive offers. In addition, since October 2018, all tenders have to be processed electronically. This also creates new procedures and problems which the experts at Leinemann Partner process with their own electronic tender platform.

**20**  
 certified specialists for  
 procurement law

In subsequent years, the law firm developed in line with construction projects where legal support had often started by helping during the original tendering process. After the tendering procedure is completed, the actual construction activity begins, potentially with legal conflicts. For public sector projects it is not unusual for the procurement procedure to lead to construction-related consulting services.

Marc Hilgers supplies an example here of how the law adapts to a changed everyday reality. »One of the trends which pushes up the number of pages of construction contracts is »self-contained« contracts which often follow a pattern found in UK or US law,« he says. In these documents everything is regulated in such fine detail that it also functions without the statutory regulations of the country where the contract is concluded or whose law has been agreed as applicable. This concept is in particular increasing in popularity with international projects. As a result, Leinemann Partner more frequently draws up ever more extensive contracts for international clients, which also include special contractual concepts such as multi-party agreements, maximum price agreements or extensive technology agreements including development components. In recent years, at all the Leinemann offices the number of international clients has increased considerably as well as German companies who are seeking

international partners being able to provide support for their international projects. This segment is a growth market for legal services.

»Small and medium-sized enterprises are not able to afford a well-staffed legal department,« explains partner Jarl-Hendrik Kues, who is heading Leinemann's Frankfurt office. These companies depend heavily on the efficient support provided by external law firms. All Leinemann lawyers provide legal support for medium-sized (Mittelstand) companies as well as for construction and industrial

groups, especially in infrastructure projects. There, they work intensively with the legal departments of the respective groups. Marc Hilgers states the claim of the law firm as follows: »We want to be a potential partner for each big project on the market.«

Notwithstanding this, litigation in the construction business is the order of the day. As in Europe, representation by a lawyer before the civil courts is mandatory, and a core area of expertise for Leinemann Partner is to conduct such proceedings. Accordingly, all the long-standing >>>



**Jochen Lüders** joined the firm as early as 2004. He is a long-standing partner in construction and real estate



»In Germany, roughly a total of 300 lawyers are certified specialists in procurement law, and 20 of them are with us.«  
**Eva Leinemann**



## The firm, the people

successful lawyers of the law firm are able to look back on important and big construction cases, which often worked as a personal breakthrough for them.

Ongoing support of  
**150**  
procurement procedures

This is also true for Jochen Lüders, who has been with the Berlin office since 2004 and became a partner in 2010. It gives him pleasure to remember the team performance which led to a lawsuit with more than a thousand pages concerning a project involving the new construction of the main Berlin railway station (Hauptbahnhof). Complicated arbitration proceedings which lasted many years against the German railways (Deutsche Bahn) concerning the remuneration for construction services for a large stretch of a new railway line were just as extensive. The tracks had been simply washed away in the 2002 flood disaster in eastern Germany. »By and by, each lawyer provided technical expertise. We compiled and sorted at least 1,400 pages, which we then delivered. Along with extensive office hours, we consumed pizza and cakes,« says Lüders.

Eva Leinemann, who was admitted to the German bar as a lawyer in 2001, and who immediately started in the Berlin office, especially remembers key proceedings in a public procurement dispute. These were before the Düsseldorf Higher Regional Court (OLG) with the »Arge Teltowkanal Los 2«. Together with a team of three colleagues and after court proceedings lasting two years, the project was awarded to Leinemann's client – the most expensive bidder from six tenders because this was the only bid which satisfactorily met the strict criteria of the tender. This case aroused great interest.

Leinemann Partner also generated headlines across Germany with

proceedings concerning the new construction of the Jade-Weser-Port in Wilhelmshaven and the cancellation of the tender for the terminal of the new Berlin BER airport. On behalf of the client Hochtief Solutions AG, the Leinemann team started proceedings in 2008 against the Berlin airport authority.

In the meantime, Leinemann Partner has become the preferred partner for such mega court proceedings. In 2019, Oliver Homann, who had just taken over responsibility for the Cologne office, hit the headlines together with Ralf Leinemann and Thomas Kirch in the 780 million litigation from the autobahn operator A1 mobil against the German Ministry of Transport. Much of the German media reported extensively on this lawsuit from A1 mobil GmbH for compensation of loss of revenue after the Lehman crisis in 2009, when toll revenues on the A1 between Hamburg and Bremen collapsed dramatically which threatened the economic existence of the operating company. In such proceedings it pays that Leinemann Partner provides a large, experienced team which is able to work through the most extensive files and facts in a short time and is therefore able to adopt a legal position in court. This is also the difference between Leinemann in procurement law and other law firms. »In Germany, roughly a total of 300 lawyers are certified specialists in procurement law, and 20 of them are with us,« says Eva Leinemann. Herself being such a certified specialist, too, she is a notary at the Berlin office. With help of the notaries, companies can be founded for clients, real estate transactions can be notarised or the acquisition or disposal of shareholdings also notarised.

Leinemann Partner, however, has also been working on other spectacular projects which are still under construction or where at the end there was no litigation at all. Marc Hilgers in particular mentions the Elbphilharmonie concert hall, whose architects Herzog & de Meuron became a client of the law firm and have since remained so. Ongoing processes receiving legal support include a number of projects

such as Stuttgart 21, various construction stages at BER airport, the Rhine bridge of the autobahn A1 at Leverkusen, a number of offshore wind farms in the North Sea and Baltic Sea as well as several public private partnership autobahn extension projects where the law firm is market leader.

In the area of procurement law, Leinemann Partner is meanwhile also commissioned by public sector clients to carry out the complete pan-European procurement process via electronic tendering platforms. This concerns

the construction services and also the complete procurement requirements for the public sector. »In particular at a municipal level for important tenders, it pays to get legal advice from an external law firm instead of intensively training individual employees to handle single projects,« explains Berlin partner Thomas Kirch. Bastian Haverland, partner in the Hamburg Leinemann office, confirms the increase in demand for a full service in procurement and adds an important point regarding legal support for public hospitals and me- >>>



»As a lawyer, I have the privilege of being able to ask questions and have things explained, if necessary a number of times.«  
**Jarl-Hendrik Kues**



**Oliver Schoofs** and **Henrik M. Nonhoff** have been heading the Düsseldorf office of Leinemann Partner for a number of years

dical insurance organisations whose purchasing procurements are also governed by procurement law and where he provides legal support for many clients.

After Berlin, the office in Hamburg has within only 15 years expanded to become the second largest Leinemann office with more than 20 lawyers. »Due to our size and experience, we are able to take on an extremely complex range of tasks in a short period of time«, empha-

sises partner Thomas Hildebrandt, who manages the Hamburg office. Hildebrandt is particularly proud of the internationality of the office: »We have lawyers from many different countries of origin who also reflect the internationality of our client base.« If necessary, consultation services can be provided in the language of the client, of course in English, French, Turkish and Polish, but also, in other offices, in Russian, Ukrainian and Armenian languages

and finally by the Chinese desk in Frankfurt. The provision of services in English and French is standard at all the offices of the law firm. In Hamburg one is particularly proud of the support for the locally well-known construction project for the new Carlsberg brewery or the highly political project of the deepening of the Elbe river for the port of Hamburg. In that project, the Leinemann partner Anush Rienau represented the successful bidder in the procurement process which, in the meantime, has carried out the large order for dredging works to enable large freighters in future to reach the port of Hamburg.

## EVERY DAY

a new project

The firm is continuously looking for ways to develop the business and the law firm. It's clear that the firm has to remain attractive as an employer. The fundamentals for this seem to be given: »We receive many qualified applications,« says Jochen Lüders, which is not always the case for a law firm. For a few years now, in Germany the number of graduates is on the decline. The attractiveness of the employer is also influenced by working hours, dress code, salary and the atmosphere in the office. »When I started, we used to work long evening hours,« remembers Thomas Hildebrandt, and Marc Hilgers adds: »We have become more professional here and considerably more efficient.« Leinemann Partner has a lot to offer: The LP Academy, for example, enables Leinemann Partner to offer its own internal further education academy which provides opportunities to recent graduates and those seeking a career change to further develop their technical and personal expertise. The academy polishes the name of the pioneering law firm which is an important play- >>>



**Lamia Özal** (left) and **Wiebke Mund** discussing a plan



»Those who believe that merely following the letter of the law is enough to provide the solution grossly underestimate the complexity of legal consultancy services.« **Oliver Homann**



## The firm, the people

er in its special areas of expertise. In 2015, Leinemann Partner opened its 6th office in the metropole of Munich in the south of Germany. Partner Stephan Kaminsky moved from the Berlin office to the south and took on management responsibility for the office and the development of the location. It was a next logical decision for Leinemann, being the market leader in Germany for construction and procurement law, to establish an office in Munich because the city and its region stands for a strong economy and strong growth. The Leinemann office in Munich has provided legal support for the new construction of the A94 autobahn and new construction of a factory for Leoni, the large automotive supplier at Roth near Nuremberg and for other industrial plant projects as well.

When questioned as to whether he should be an engineer for such projects, Stephan Kaminsky says: »A chemical plant is something completely different to a geothermal power station. There are a few lawyers who may have completed studies to be an engineer, and some of these are at the Leinemann firm. But I do not believe that this is a prerequisite for a construction lawyer. On the other hand, an active interest and passion for technical matters is certainly a requirement.« On the question of whether due to the large ongoing number of projects he is even able to switch off, Stephan Kaminsky simply smiles. The legal field is his passion, which means he feels no need to switch off. He likes dealing with the engineers who represent an important part of the clients.

600 kilometres north, the Leinemann office in Düsseldorf is managed by the partners Oliver Schoofs and Henrik Nonhoff. The office provides consultation services for the renovation and new construction of large bridge projects and also the building of plants for the production of prefabricated construction modules. Since 2013, Schoofs and his team have been advising for the state of Rhineland-Palatinate which was in charge of constructing the high Moselle bridge. This outstanding construction is without doubt a flagship project for Leine-

Photos: Tim Wegner (top), Markus J. Feger



»Due to our size and experience, we are able to take on an extremely complex range of tasks in an extremely short period of time.«

**Thomas Hildebrandt**

mann's Düsseldorf office, which has been managed by Schoofs from its opening in 2001. »The Cologne cathedral would even fit under the bridge,« says Schoofs with a wink in an allusion to the historical rivalry between the two Rhine metropolises of Cologne and Düsseldorf, with the mandate being one of the highest visible projects in the law firm. Bridges seem to be a speciality of the law firm. Other Leinemann locations, for example, have advised for construction companies in connection with the Possehl bridge at Lübeck, with the Leverkusen bridge over the Rhine, and with the Salvador-Allende bridge in Berlin where, in the spring of 2019, a power cable was accidentally damaged and over 30,000 households in the south

Photos: Markus J. Feger

—  
 Permanently about  
**1,000**  
 pending litigations  
 —

east of Berlin had to go two days without power. The longest blackout in Germany was reported all over the media - and Leinemann took the case. Henrik Nonhoff is active for many Düsseldorf clients in the background without the respective contractual partner of the client being aware of it. Sometimes it is an advantage when a lawyer knows when to be discreet in order to prevent a hardening of atti-

tudes. »We support many - at least the majority - of the projects without having to make an appearance,« explains Nonhoff to underline the role of the lawyer. Leinemann lawyers sometimes work undercover in strictly confidential projects. For example, they provided support for an entrepreneur who, after the 9/11 attacks, constructed a large protective wall in a nuclear storage facility around the complete site. Nonhoff also provides legal support for a subcontractor for the spectacular new construction of the type F frigate for the German navy where military secrets have to be safeguarded. The project has an order volume of over two billion euros.

In 2015, partner Jarl-Hendrik Kues moved from the Berlin of- >>>





A friendly welcome:  
**Charlin Hegert**  
and **Jasmina Todorovic** from  
the Berlin office

**A corner brimming with art:** all the office locations are enhanced by pictures and sculptures

Photos: Markus J. Feger

## The firm, the people

Since he moved to Frankfurt and he has managed the office since 2017. One of his key projects is the construction of a plant for wind turbine generators in Cuxhaven. The client also came to the Frankfurt Leinemann office because the client and lawyer were already known to each other, which once again illustrates that the lawyer's business is a people's business. For most large projects, the proximity of the office is not as important as a good and well-established cooperation. The plant construction project at Cuxhaven was characterised by typical problems such as high time pressure, drawings without sufficient detail and other unfavourable external circumstances such as bad weather. At the end all these points could be resolved without legal action after intensive negotiations. But it was hectic: »I have never taken part in so many telephone conferences before,« says Kues. Having strong nerves is very important in the field of plant construction. Kues remembers a quotation from Bobby Fisher, the world chess champion of the time: »The threat is stronger than the execution – and that is exactly what we have to do when we support the construction process: threaten to take painful measures.«

# 6

offices throughout  
the country

All the Leinemann offices are characterised by their team spirit and atmosphere. It is also Leinemann-specific to look at many works of art which are placed in all the offices of the law firm. They mainly come from the Leinemann foundation, which was founded in 2008, as well as from Eva and Ralf Leinemann's private collection. The foundation is a charitable organisation, and the purpose of the foundation is the promotion of art and culture, civil engineering, and construction and procurement law. The foundation maintains its own art col-

Photo: Tanja Kernweiss



»We want to be at the client quickly or arrange for the client to quickly visit us. And the client need not always be a big player.«  
**Stephan Kaminsky**

lection and regularly presents young talent awards for the fine arts. It also promotes exhibitions and catalogues, construction research projects, thesis projects or it awards prizes to excellent dissertations at the Deutsche Baugewerkschaftstag e.V. as well as other institutions. As a result, the occupants at the six offices of the law firm are surrounded by works of art. In all directions there

are inspiring, provocative, uplifting pictures, installations and sculptures. If one is lucky enough to be given a personal tour by Mr. and Mrs. Leinemann through the collection, one experiences at first hand many anecdotes about the works of art which frequently have a reference to building or architecture. Law is extremely creative in this office.

# »An absurd disregard for realities«

For fifteen years the lawyer Ralf Leinemann has represented construction companies at the accident-prone Berlin airport (BER) which has now finally opened. His conclusion is that the disaster could have been foreseen

Interview Max Haerder, Christian Schlesiger

**Mr. Leinemann, the new Berlin airport should have opened in 2011. Now, ten years later, that day has actually arrived. At the location you have represented the interests of dozens of construction companies. Are you able to summarise this mess in a single sentence?**

The attempt to ignore reality, and count on wishful thinking instead, was doomed to failure.

**Perhaps point by point.**

There was chaos right from the beginning with the opening date and estimated costs included in the tenders. An examination of the documents by someone familiar with large construction projects would clearly have shown that the airport plans were based on a completely incorrect budget and an illusory schedule. This is not to mention the curious detail that the operators only realised at quite a late stage that the original abbreviation BBI had already been assigned to an airport in India. The abbreviation for the airport today is BER.

**At the start, around 2006, the terminal for the capital's airport was budgeted to cost approximately 630 million euros.**

A year later, a number of tenders had been submitted by construction con-

sortia and they were all in the range of a billion euros. Apart from that, the atmosphere during the negotiations with the contracting authority was unusual anyway. It soon became clear that the airport company did not really intend to negotiate on prices. Shortly afterwards the tender was withdrawn. Instead of the necessary scrutiny of the budget, the Berlin mayor of the day, Klaus Wowereit, preferred to go on the offensive and accused the tendering companies of collusion.

**The airport company, owned by the German state and federal states of Berlin and Brandenburg, then took on the task themselves of awarding contracts for the respective works for the construction of the terminal. When did you first realise this strategy would fail?**

This was when the invitation to tender for general contractors for the terminal was cancelled on clearly unjustifiable grounds and later on when new invitations to tender were issued. In the new invitations to tender the completion date of 2011 remained unchanged. In fact, the ill-based decision had led to the passing of much time and the planning for the tendering process still had to be awarded. Therefore, at least one additional year should have been planned.

**Would a billion euros have been realistic?**

Around the same time, the new terminal 2 at Munich was completed, which was a comparable facility. The final costs were not yet known, but they were already exceeding one billion euros. Did they think they could build in Berlin five years later for 40 percent less? It would have been possible to scale back using plain facades, no natural stone, no walnut wood, but the figure of 630 million euros would still have been unrealistic.

**And then?**

Well, at the time we commissioned our own expert report which carried out an international comparison of construction costs. The least expensive terminal since 1995 was built in Athens and even the costs of that project per square metre exceeded the Berlin budget by roughly 30 percent. Whoever wanted to know, could have found out.

**The airport then drew up the construction planning and the construction work was divided into separate contracts.**

The plans for the shell construction were already late with the drawings never being available at the promised date. I remember a meeting with a construction manager of the contrac-



»The management and supervisory board of the airport never wanted to hear any bad news.«

Ralf Leinemann, founder of the Leinemann Partner law firm

**In 2012, did you actually receive one of the famous invitations for the opening?**

Naturally not. We, the lawyers of the construction companies, were always the bad guys.

**What were your thoughts when the planned opening was cancelled just a few weeks before the event?**

The airport waited a really long time before making the announcement.

**Has an airport boss ever impressed you?**

You couldn't really take them seriously. Especially not in relation to the building of an airport.

**Until a former secretary of state had to come.**

Engelbert Lütke Daldrup was already familiar with the project and he had no need to gratify his ego. Apart from that, he knew the negotiating politicians inside and out. That calmed down the project.

**Is he the quiet saviour?**

This praise should firstly be given to the construction companies which finished works on the terminal. By the end of 2011 construction work was carried out in an anarchistic manner, under extreme time pressure, sometimes using just hand sketches. The project was supposed to be finished, by any means possible. Only the knowledge the companies had of the terminal could help finishing the airport. Since the airport authority had in addition stupidly terminated its planners.

ting authority who said to me: »The construction schedule of your client includes a delay of six months, which we can't show anyone!« I asked: »Why not?« The answer was: »No one here wants to hear that.« So, I replied: »Then we will have to accelerate the work with more people and shifts, but this will be expensive.« Then again came the answer: »Oh my goodness, no, more costs are not an option.«

**So the wishes were not realistic ...**

That's right. The management and supervisory board of the airport never wanted to hear any bad news. Persons not mincing words or issuing warnings were simply removed. There was an atmosphere of fear and an absurd disregard for reality.

**Is the BER airport then just a regrettable isolated case, or is it symptomatic of major projects?**

The underestimation of the project budget is clearly symptomatic. This is a practice which has developed over decades. Costs are calculated to be low for political reasons in order not to endanger the approval process. The underlying expert reports which justify such costs assume perfect conditions which are not realistic. For example, the winter is always mild, summer temperatures do not rise

above 29 degrees, there are no bombs or contamination in the ground and changes to the plans will not happen in any case. This all represents the ideal world where there are no problems.

**And everybody knows the reality will be different?**

Right you are. For the BER project there were changes and problems every three months. Plans were wrong and arrived too late, a larger shopping area was required, then a more heavy-duty baggage handling system, more budget airlines, and later, a second boarding bridge was added for the A380. All of these were changes made as the existing plans were already in the implementation stage – a fundamental error.

**But the real obstacle turned out to be the fire protection measures.**

There the smoke extraction was planned with aesthetics as the main priority, but with a disregard for common sense and the regulations. And the devil lies in the detail. For example, each room required a number to be registered on the main control panel. Due to the planning chaos, a number of rooms at the BER were not even numbered or the numbering became mixed up in the course of modifications, so something would light up on the control panel and nobody understood what that was.

Volkswagen's future e-factory

# Going electric



Volkswagen plans to sell **26 million electric vehicles** by 2029

**T**he Volkswagen Group has aligned its company strategy to fully commit to electric mobility. Over the next nine years, up to 75 new pure electric models will be introduced together with around 60 hybrid vehicles. All in all, Volkswagen plans to sell 26 million electric vehicles by 2029. To achieve this target, the company management in Wolfsburg has earmarked roughly 33 billion euros for an enormous investment programme to catapult the world's largest car producer, and, at the same time Germany's largest industrial group, into a leading position in the electric mobility market.

In order to ensure competitiveness in the future global market for electric vehicles, however, the prices of key components should not be dictated by automotive suppliers. In future, the battery – which up to now has only been a small purchased component – will play an important role in the electric car because it defines the driving range. This is exactly why the VW strategists have opted to design and manufacture their own electric vehicle batteries. A pilot line for small series production is already in operation in Salzgitter, and, in the near future, a larger plant will be constructed on the same company site, run by a joint ven-

ture of Volkswagen and Swedish battery pioneer Northvolt. A gigafactory will be created to produce 220,000 to 250,000 electric vehicle batteries every year. That corresponds to a total annual capacity of 18 to 24 GWh of electrical energy. The German Federal Ministry of Economics is already supporting the construction of Northvolt's battery cell factory in Sweden with a state guarantee amounting to 525 million US dollars. Production at the Salzgitter facility is already set to start in late 2023.

Volkswagen has teamed up with the Swedish battery manufacturer Northvolt as a joint venture partner and also with Leinemann Partner as legal advisors. From Leinemann's Berlin office, a team of legal experts specialised in construction and architecture law is providing support right from the start for the planning and construction of the plant. At the beginning of the project, the planning contracts had to be elaborated and negotiated to enable the drawing up of the application documents for the approval planning for the new plant according to the German Federal Immission Control Act (BImSchG). Northvolt's first factory in Sweden served as a model for the German project. But, as is often the case, the devil is in the detail. In Germany, it is not possible to fully implement everything which is built and approved in Sweden. Some things have to be planned differently, and new contracts are also required.

The Leinemann team will provide legal support for all further contracts in the construction phase. Volkswagen is managing the construction of the plant at its Salzgitter site. The operator of the battery plant will then be the joint



**Ralf Leinemann,**  
lawyer for construction law,  
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venture named Northvolt 2, in which both partners have a 50 percent interest. The joint venture at Salzgitter will create 1,600 new jobs in the battery plant and a recycling facility. But this is not enough for Volkswagen's ambitious plans for electric mobility. In Europe alone from 2025 there will be an annual requirement for 150 GWh, and the same is true for Asia. Therefore, all of the car producers will have to consider further battery production locations.

But a conventional battery plant would not be ambitious enough for the world's largest car producer. Ultimately, electric mobility is only beneficial for the environment when the production of the required power and batteries is climate-neutral, and this is exactly the area of expertise of VW's Swedish partner Northvolt, which produces the batteries



Technicians inspect battery cells from the pilot production



An automatic handling machine stacks electrode sheets

in a process completely free of CO<sub>2</sub> emissions, i.e. using green technology. This gives the company an advantage over other manufacturers. The team at the Leinemann Partner law firm still has a great deal of work to do until the first battery plant starts production. Ralf Leinemann and Armin Preussler, the two lawyers in charge for the VW legal department for this project, are confident that, due to the considerable experience of the law firm in working with industrial projects, it will be possible to also provide tailor-made legal support for the production of the battery cells to ensure fast implementation of the start of production. Up to now, everything is running smoothly.

# Leinemann assists with real estate restructuring at Real supermarkets



A large-scale investment programme is planned for the restructuring of real estate

For two years the German Metro AG company was in search of a buyer for its Real supermarkets which had developed to become a loss-making subsidiary. After a long bidding contest, the bidder SCP Group was successful, supported by its German partner x+bricks who are a leading investor in food-anchored real estate.

SCP and X+Bricks took over 276 Real markets, with 80 properties distributed throughout Germany, the Real online portal (real.de) and 34,000 employees. After approval by the German cartel office, Kaufland and Edeka are set to take over a total of 141 of the markets including all of its employees. In addition, roughly 50 Real supermarkets continue trading under their own name for only 24 months. Buyers are being sought for the remaining markets. Potential buyers include Rewe, Globus and the Migros subsidiary Tegut.

A large-scale investment programme is planned for the restructuring of the 80 German properties. However, this project has a demanding schedule where the planning and building measures should be completed within an

ambitious timeline. In a project office, the representatives of the planning offices, the subcontracting companies and Leinemann Partner's lawyers will be able to join for short communication channels and meet the challenge. The special point here is the large number of properties and different tasks which are distributed all over Germany. These tasks include maintenance and repair measures and also the conversion of many existing Real markets. The target is to use the properties again, which usually means downsizing the markets and developing the released areas as smaller units suitable for new tenants.

The Leinemann office in Berlin will assist this process with a team guided by senior partner Jochen Lüders and partner Marc Steffen. The first step will be to establish a strategy for the awarding of contracts and then to draw up a large number of planning and construction contracts in a very short time, then to negotiate these and provide support for all the measures as the



**Jochen Lüders,**  
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architectural law and  
procurement, Berlin



**Marc Steffen,**  
lawyer for construction and  
architectural law, Berlin

construction phase begins. In this process, the whole project and all contracts must have a flexible structure in order to enable the disposal at any time of individual properties even during the planning or conversion phase. And, last but not least, at the end of the project it must be possible to transfer all of the contractual relationships to the future owners, and there must be separate and comprehensive documentation including all of the legal correspondence for each property. As Jochen Lüders explains: »We are happy that SCP and X+Bricks has entrusted us with this extensive and varied task. We are looking forward to this project, which is very challenging and interesting at the same time.« In two years, LP Magazine will hopefully report on the successful conclusion of the supermarket conversion.

Photos: real, Leinemann Partner

Werner Verlag

## State of the Art im Bauvertragsrecht



Inkl. FIDIC conditions of contract

Wesentliche Basis eines Bauvertrags ist in der Praxis nach wie vor die VOB/B. Der Leinemann-Kommentar ist dank eines renommierten Autorenteams aus führenden BaurechtsanwältInnen, RichterInnen und Sachverständigen eine Autorität auf diesem Gebiet.

### Neu in der 7. Auflage:

- Bezüge zum neuen Bauvertragsrecht
- Zahlreiche Änderungen in der Rechtsprechung des BGH

### Der Herausgeber:

Herausgeber und Mitkommentator, Rechtsanwalt *Prof. Dr. Ralf Leinemann*, Berlin, ist einer der profiliertesten deutschen Baurechtler und renommiert für seine Expertise bei Großprojekten und in der Bau-Prozessführung.

### Aus dem Inhalt:

- Auswirkungen des neuen Bauvertragsrechts auf den VOB-Vertrag
- Kommentierung der geänderten BGH-Rechtsprechung zu § 642 BGB, zu unwirksamen spekulativen Preisen, zur Auslegung funktionaler Leistungsbeschreibungen und zu unwirksamen Bauvertragsklauseln
- OLG- und LG-Urteile werden aktuell und gewohnt praxisnah erörtert und kritisch gewürdigt.
- Detaillierte Erläuterung der internationalen Bauvertragsmuster der FIDIC conditions of contract.

Leinemann (Hrsg.)  
**VOB/B Kommentar**  
mit FIDIC conditions of contract

### Gebundene Ausgabe

7. Auflage 2019  
1.576 Seiten  
€ 179,-  
ISBN 978-3-8041-5310-3

### Sofortiger Zugriff auf die digitalen Inhalte:

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Holsten brewery

# Hops and malt - mother nature's gift!

Leinemann Partner advised the Carlsberg Group during the construction of the new Holsten brewery in Hamburg



The new **large facility** with approx. 55,000 m<sup>2</sup> is producing roughly a million hectolitres of beer per year

»L&P team have been recommended to Carlsberg and, without any doubt, they fulfilled in 110% the already very positive recommendation.«

In November 2019, the Carlsberg Group opened its new Holsten brewery in Hamburg, only two years after the project was started. Together with Hamburg mayor Peter Tschentscher, Sebastian Holtz (CEO Carlsberg Germany) opened this completely new-built beer brewery. In view of the historic importance and ambition of the project, the presence of these high-level guests was not a surprise. A state-of-the-art brewery was to be constructed in the city of Hamburg.



**Roman Schlagowsky,**  
lawyer for construction and architectural law, Hamburg



**Gerrit Frömming,**  
construction lawyer, Hamburg

The sheer size of the project is unusual. The new large facility with approx. 55,000 square meters will produce roughly a million hectolitres of beer per year. This means that every day up to one hundred trucks will be loaded with beer, with just the production area taking up 25,000 square metres of space. The construction of the new Holsten brewery facility also heralds the closing of the traditional location at Hamburg-Altona which has existed for over a hundred years. The old buildings will be torn down to make way for a much needed residential area.

In addition to the size of the project, the schedule for its erection was quite ambitious. There were only two years from the start of construction until the move, which for a project of this size is anything but a sim-



**Lukasz Gladysz,**  
Project Director - New Holsten Brewery, Carlsberg Supply Company Germany GmbH

ple task. It required a high level of professionalism and commitment from those involved. While fulfilling these requirements, the Hamburg lawyers from Leinemann Partner convinced the prestigious client.

The Hamburg legal team consisting of Roman Schlagowsky, Gerrit Frömming and Bastian Haverland was involved since August 2018 in the crucial phase of the prestigious construction project. Leinemann Partner provided legal advice in writing in the form of internal opinions and correspondence undertaken with third parties, and also participated in the weekly meetings on the construction site. This participation enabled an interdisciplinary exchange between the construction management, architects and construction supervisors which facilitated the handling of legal issues through the provision of the required technical expertise. Furthermore, the adhoc consultation process had the advantage of creating close links to the client and the project. Given the participation of the global player Carlsberg, Leinemann's legal advice was given in both German and English.

Due to the expertise of Leinemann Partner in the area of construction law, our team was successfully able to support the construction process.



The MS Münsterland will resume its ferry services in 2021

### MS Münsterland

## A ferry fueled by LNG - transformation of the MS Münsterland

The debate on climate targets, carbon footprints and pollutant emissions has also reached the shipping business. While large cruise liners are currently faced with a lot of criticism, the AG Ems shipping company has for some time now used liquefied natural gas (LNG) for its ferry services. Following on from the »Helgoland«, a recently built ship operating on the Cuxhaven - Helgoland route, the shipping company transformed the »Ostfriesland«, and is now set to transform the »Münsterland« which operates as the ferry to the island of Borkum in the German North Sea.



Laura Jentzsch,  
procurement lawyer, Berlin



Thomas Kirch,  
procurement lawyer, Berlin

The work involved in the refit is enormous, as indicated by the costs which amount to 17.5 million euros. In order to realise the increased space required for fuel and the propulsion system without restricting the passenger capacity, the stern of the ship was completely rebuilt together with its propulsion system and the ship was lengthened by 18 metres. The time lost for the ferry service had to be kept to a minimum, there-

fore the stern, which already has a length of 39 metres, is to be pre-manufactured and assembled at the Koninklijke Niestern Sandern BV shipyard in Delfzijl (Netherlands). The ship will only enter the dock after this work is finished. In the dock, the old stern will then be removed and the front part will be joined to the new stern.

The chairman of AG Ems, Dr. Bernard Brons, did not question the work involved: »As a first mover, we want to use this second refit in our Borkum fleet to send a further signal for sustainable environmental friendliness in the maritime sector.«

The refitted ship is expected to reduce carbon dioxide emissions by 20 percent, reduce nitrogen oxide emissions by at least 90 percent and decrease fine dust pollution to almost nothing. The clean air zone of Borkum will benefit from this and ferry passengers will have a more comfortable trip. There will be space for approx. 15 further cars, two new saloons, and a large sun deck. Therefore, in the course of the transformation, the gastronomy will also be reorganised and a lift will be installed to provide more comfort for passengers with limited mobility.

The project has received federal funding to support the LNG technology. Leinemann Partner were chosen as an external awarding office by the shipping company to ensure that all procurement requirements for the funding are implemented. The managing director of the successful shipping yard, Wietse Holmann, also offers praise: »The negotiations were long, but due to fair and open discussions we were able to reach a good result.« The preparations for the new construction of the stern have already started. In the autumn of 2020, the MS Münsterland was removed from service. If all goes according to plan, the extensively modernised ship will resume its ferry service later by 2022.

Photos: Leinemann Partner, P. Andry

### Olympic village

## Olympics with a difference - the Olympic village near Berlin

Since 2017, real estate partner Michael Göger from the Leinemann Berlin office, together with the support of lawyers Shushanik Roecker and Lamia Özal, has been advising a number of subsidiaries of Deutsche Kreditbank Berlin in connection with the development of the former Olympic village of 1936 near Berlin.

The Olympic village is situated in Elstal, a district of the Wustermark municipality, about 19 kilometres west of Berlin. The Olympic village is a memorial of special importance for German history and also for Olympic history. It was built for the XI. Olympics of 1936 and at that time served as accommodation for the male Olympic athletes. The architect of the Olympic village was Werner March, the same architect who also drew up the plans for the Olympic stadium in Berlin.

However, the Olympic village was only briefly used as accommodation for the Olympic athletes. Shortly after the end of the Olympics, the whole area was used for military purposes. Initially it became home of an infantry regiment of the German army and was later converted to be a military hospital. Then, after the Second World War, the location was used by the Soviet red army. In this period, the condition of the historical buildings deteriorated considerably and the complete village was affected. After German reunification the site and the buildings fell into disrepair. The resulting dereliction further adversely affected the condition of the Olympic village.

Since then, a number of urban development plans and measures developed for the surrounding countryside have enabled the creation of living space, and a new urban development plan has also been drawn up for the Olympic village to create living space for several thousand



Michael Göger,  
real estate lawyer, Berlin



Lamia Özal,  
real estate lawyer, Berlin



The Olympic village was built for the Olympic Games in 1936

people. The implementation of this plan is surely one of the most prestigious housing projects in Germany. In the meantime, the first development plan has come into force. The construction measures are in full swing and a second development plan is in preparation.

Leinemann Partner happily provides legal support for such an exciting project. In this process we are taking care of all questions relating to the development of the site. This includes the planning and realisation of numerous infrastructure measures such as roads, green areas and utilities, including the establishment of building rights in the development plan procedure. Furthermore, we are providing legal support with the drafting of all contracts concerning construction, architects and other planners as well as conclusion of development contracts with the municipality, the waste water association and other utilities. The legal issues cover a substantial part of construction and architectural law and also numerous questions in relation to public law, such as zoning law, building regulations and also conservation matters, animal protection and protection of historical buildings. In addition, we are assisting in the disposal of subplots to developers and investors and the associated due diligence processes and are handling purchase agreement negotiations including notarisation.

Substantial claim in the area of international industrial plant construction

# How is your insurance cover?



As it turned out, the plant was correctly specified, but the **wrong sieves** were fitted

Leinemann Partner is well positioned to handle international projects. We were recently instructed by the German group holding of a US-conglomerate to assert claims in connection with industrial liability insurance. The mandate was of an international nature. An English group subsidiary of the client manufactured and delivered sorting machines for silicate sand for a customer from Saudi Arabia. The customer sued for compensation for way over 10mio. Euros in the Technology and Construction Court of the High Court of Justice of the United Kingdom on grounds of an alleged non-attainment of required performance values. As it turned out in the course of the legal dispute, although the machines were correctly specified and also able to meet the required performance rates, incorrect sieves had been fitted. Though the defence against the legal action was successful, there remained a significant financial loss, mainly due to the considerable costs of the defence which alone amounted more than 1 mio. Euro. Our client made a claim on the company's liability insurance for this loss. The insurer refused to assume liability in principle.

Leinemann's Munich office assessed the prospects of success of a legal action against the industrial insurance insurer, drew up a draft coverage claim immediately and passed this on to the insurer. It quickly became clear that a reference to a planning error in the specification of the machine would not have much chance of success. Although damages arising from planning errors were included in the insurance policy, this would not have come within the insurance period. In addition, a decisive factor was that, in the case of planning errors, the insurance did not cover damages due to loss of production. We therefore abandoned the strategy pursued previously and on behalf of our client explained that this actually was a case for a claim on product liability (damages caused by defective products), whereby this single claim event lay within the insurance period.

This draft claim opened the door to settlement discussions with the industrial insurance insurer. Negotiations with regard to technical issues, were carried out in English, legal arguments were then made in German. As a consequence, within a few weeks we were able to resolve a dispute which seemed to be bound for litigation. The client was highly satisfied that the insurer made a reasonable payment and a legal dispute was avoided.

Leinemann Partner has extensive expertise in the area of German and international plant engineering and construction and is frequently involved in legal disputes pertaining to the field of insurance. The Berlin office experts also offer insurance expertise with the lawyers Igor Zarva, LL.M., and Jasper Strehlow (lawyer for insurance law).



Stephan Kaminsky,  
lawyer for construction and  
architectural law, Munich



Patrick Böck,  
lawyer for construction and  
architectural law, Munich

Photos: sangriana/shutterstock.com, Leinemann Partner

Public procurement

# Double-decker buses for Berlin – British Leinemann client gets contract award

There were omnibuses in Berlin as early as 1847. However, in those days they were drawn by horses. A lot has happened since then. After 1905 the horse-drawn omnibuses were slowly replaced by motor-driven buses, since 1929 the first buses drove through the city with the BVG (Berliner Verkehrsbetriebe) name. As a sort of birthday present (90 years of BVG), the BVG will now receive a complete new fleet of double-decker buses. For the first time in eight years, the BVG purchases new double-decker buses. BVG, the largest local transportation authority in Germany, has awarded a contract to Alexander Dennis Germany GmbH, a wholly-owned subsidiary of Alexander Dennis Limited with headquarters in Falkirk, Scotland, advised in procurement law by Leinemann Partner, to deliver the new buses. According to the current planning, the general contract concluded with the BVG initially foresees an order for 200 triple-axle double-deckers with modern Euro 6 drive technology. In total, the contract provides for up to 430 double-deckers. The first pre-series vehicles are on the road in Berlin since late 2020.

After successful tests and a trial operation with two buses, the supervisory board of the BVG decided in 2018 to give initial approval for 70 vehicles. Further double-deckers will follow, should the vehicles prove themselves in service. According to the BVG, the investment volume released by the supervisory board amounts to 220 million euros. At the same time, the BVG can remain flexible with regard to market developments for electric buses. Depending on the speed of this market development, the number of vehicles with conventional drive systems, which BVG calls up from the general contract, will go down proportionately as the development of electric buses to series for double-deckers accelerates.

The award of the contract to Alexander Dennis was made, however, in a way which was very different to the way suggested by BVG's »Is mir egal« (I don't care) advertising slogan. This is because the BVG did care and still cares who won the contract. As the contracting authority, the BVG is bound to strict regulations enshrined in procurement law



For the first time in eight years, the Berlin transport service (BVG) will acquire **new double-decker buses**

of the EU-included »Vergabeverordnung (VgV)«. The bidders must comply with these competition rules.

Leinemann Partner with their long-standing expertise in German and international construction and procurement law was the obvious choice as a partner. In the course of the prequalification, legal advice was given on contractual and procurement law questions, and the negotiation procedure also included consulting services with regard to strategic elements. In this process, the consulting took place largely in English language. Leinemann lawyers worked closely together with Alexander Dennis Limited and their relatively new German subsidiary since 2017. The awarded BVG contract is the most important contract for the recently founded subsidiary company Alexander Dennis Germany GmbH.



Sandra Jurke,  
procurement lawyer, Berlin

Photos: Berliner Verkehrsbetriebe (BVG), Leinemann Partner

# EPC contract for the construction of a silicon metal production plant in Iceland



PCC SE has invested approx. 265 million euros in the plant

The location of Húsavík («cove with houses») with its 2,200 inhabitants may only be known to some Iceland insiders in Germany. Yet now, one of the most modern and environmentally friendly silicon metal production plants in the world has been built at this picturesque fishing town, with legal support from Leinemann Partner. The plant which will be important for the supply of raw materials to Germany entered into service in 2018.

The holding PCC SE with headquarters in Duisburg invested approximately 265 million euros in the plant. The production plant was built by the group subsidiary PCC BakkiSilicon hf, Húsavík, the operator of the plant. Silicon metal is used as a raw material for photovoltaic modules and also in the chemicals and aluminium industry, for example as a high-strength aluminium alloy used in the automotive industry. Market needs in Germany alone are estimated to be at 300,000 tonnes per year. The biggest producer of silicon metal by far is China. The 32,000 tonnes from the silicon melt in Iceland will mainly be destined for German customers.

Why choose a production location on an island way out in the Atlantic Ocean? The answer to this question lies in Poland where to the south of Warsaw, PCC group extracts quartzite in its own quarry. Silicon is then produced from the quartzite in Iceland. In Poland, the rock is transported by freight train to the port of Stettin (Szczecin) and then shipped directly to the ice-free port of Húsavík, a sea route of more than 3,000 kilometres. Then why not have a silicon melt directly on site in Poland? The main reason for this is the low-cost and environmental friendly supply of energy in Iceland. Almost all of the power requirements in Iceland are covered by renewable energy sources such as geothermal or hydroelectric power, and it was even possible to build a power station in the locality of the plant. As the production of silicon requires a very high amount of power, this proved to be a decisive advantage.



Andreas Jacob,  
lawyer for construction and  
architectural law, Berlin

»The whole package was just right,« says Dr. Peter Wenzel, chairman of the supervisory board of PCC BakkiSilicon hf. The local population, the administration of the city of Húsavík and the Icelandic government supported the project right from the beginning. This helped to create 125 new jobs in the north of the island which welcomes the economic development. The arrangement of the plant in the form of a terrace and a special colour scheme helps to create a harmonious overall image in the countryside.



Almost all of the power requirements in Iceland are covered by renewable energy sources

PCC instructed Leinemann Partner for the legal advice needed during the construction phase of the project. Leinemann Partner has long-standing expertise in the field of German and international plant construction, with FIDIC/EPC turnkey contracts and the associated, typical arbitration mechanisms. The legal support was provided exclusively in English, including successful arbitration proceedings. As Dr. Peter Wenzel put it: »The enormous experience of the lawyers Andreas Jacob and Prof. Dr. Ralf Leinemann at the Berlin office was a great help in enabling a smooth realisation of the project.«

Good luck to PCC for the successful operation of its new subsidiary in Iceland!



# The clean guys



Local authorities are increasingly procuring for waste disposal services, which have become an interesting business for private service providers. Cities and local authorities which opt for this strategy, however, must adhere to public procurement procedures for such services before they commission the service provider.

The private waste management sector is currently recovering from the bad reputation it collected in past years. The contracts concluded with local authorities have not always led to public sector clients getting the best waste disposal service for the lowest price. The considerable improvement which has taken place is partly due to the fact that the local authorities now have a transparent procurement procedure and the organisation of different disposal services to be subject to separate contracts (organic, paper/cardboard/plastic, domestic refuse, etc.). This has opened up the market to medium-sized companies, has created a competitive environment where the »top dogs« can only continue to be successful when they make competitive offers in bidding contests with new market entrants. Market players cannot anymore rely on automatically getting the next contract.

One of these new market entrants is May Biopower GmbH from Jülich, which is a small city between the triangle of cities formed by Cologne, Aachen, and Düsseldorf. In addition to the main area of economic activity of May Biopower GmbH which is the manufacture and distribution of wood fuel (pellets), the company also develops successful concepts for waste disposal for local authorities. In a tender procedure with its hometown of Jülich, May Biopower was recently successful and won the tender against the previous contractor, a long-standing waste disposal company.

In the process, the Cologne office of Leinemann Partner provided active legal support because the previous service provider did not accept the result of the tender procedure



**Oliver Homann,**  
lawyer for procurement,  
construction law and  
architectural law, Cologne

and lodged an appeal with the procurement chamber. When the chamber confirmed the contract award in favour of May Biopower, the claimant lodged an procurement review proceeding in the second instance at Oberlandesgericht Düsseldorf (Düsseldorf High Court). May Biopower was also successful there with Leinemann Partner acting on their behalf before the court and will now secure a sustainable and environmentally-friendly disposal system for the next eight years in the city of Jülich.

Only weeks later, the city of Pulheim, a municipality with 50,000 inhabitants north of Cologne, also issued an invitation to tender for their waste disposal. May Biopower suddenly found itself in a déjà vu situation. They were once again awarded the tender. Again, the previous service provider, which was the same company as in Jülich, contested the award of the tender at the procurement chamber. May Biopower again prevailed together with Leinemann Partner before the procurement chamber. True to the motto of »Never change a winning team« the two will stay aligned during the appeal before the Düsseldorf High Court.

Leinemann Partner is proud to have successfully acted as litigators as well as advisors for a young company which still has to make a name for itself in its field where participation in public tenders is not straightforward and where bidders must protect their interests against powerful competitors. This is how procurement law is crucial in supporting competition.

# Procurement law for a »good cause«

Active development aid is a long-standing cornerstone of policy of the Federal Republic of Germany. It is rightly understood to be a humanitarian and rational imperative and is actively promoted by the Federal Ministry for Economic Cooperation and Development (BMZ) within the scope of the Agenda 2030 of the United Nations. International efforts are regularly focused on the »5 Ps« (People, Planet, Prosperity, Peace, Partnership).

In order to implement ambitious targets, the German Federal Enterprise for International Cooperation (GIZ) forms the »spearhead« of German development aid. The GIZ has established project offices throughout the world with the result that sometimes employees happen to be located in dangerous regions. Deployment actions with armoured vehicles are the exception, but the job cannot be called simple in any terms.

The same is true for procurement. While the GIZ has up to now executed the procurement exclusively on its own account, as with many other public sector clients, it is increasingly faced with the limits of its capacity. You may be surprised to learn that all their contracts must be procured by following the same rules and regulations as any purely domestic administrative body. Leinemann Partner were selected – by another formal procurement proceeding – to support the GIZ in the scope of a pilot project as an »external awarding office«. On the basis of a consulting concept created especially for the development agency, Leinemann Partner now performs numerous award procedures for the GIZ which are mainly in English, but also in German and French language.

The areas of deployment include environmental projects, support for the Vietnamese population to help them cope with flooding in the Mekong Delta and vocational training for workers in Uganda to help them have a share of the local natural resources. Accordingly, the procurement items are as varied as the countries and regions involved where the work is performed. This entails overcoming language barriers, managing international bidders and making the procurement process as transparent as possible so that the various bidders from all corners of the world understand the requirements of a European procurement procedure in accordance with the German procurement regulations.

At times, tension between different ethnic groups and cultural traditions naturally have to be taken into



Each procurement procedure is unique due to the special requirements of the respective country of deployment

consideration during the procurement consulting process, which makes each procedure unique and demanding at the same time. For example, how will you react if a consultant is without any grounds not allowed to enter the country of deployment? What could happen if the political framework suddenly changes or if the security situation deteriorates?

These and other questions had to be answered in more than 50 procurement cases which have been processed so far, and an end to the successful cooperation is not yet in sight.

The pilot phase has gone extremely smoothly, and the teams from Leinemann Partner and GIZ have grown together to become an effective unit. Working together, an ever larger number of parallel procurement processes were being successfully managed and resolved. In the course of each process it was possible to improve the workflow and communication interfaces which has in turn increased the overall efficiency of the procurement process.

GIZ benefits from a continuous transfer of expertise with regard to the procurement management procedures and procurement law expertise.

Junior GIZ staff are able to learn the procedures of the complex procurement process »on the job« under the guidance of Leinemann experts in procurement law. This enables GIZ to manage peak workloads using external reserves and also simultaneously secures the competent and sound training of its own young employees which makes the cooperation a sustainable investment.

The support for GIZ is mainly rendered from the Leinemann office in Frankfurt by the lawyers Jonas Deppenkemper and Timm Freiheit under the guidance of partner Jarl-Hendrik Kues.



**Jonas Deppenkemper,**  
lawyer for construction and  
architectural law, Frankfurt  
am Main

## Prefabricated buildings

# Living' in a box



Prefab elements can be used to erect entire building complexes

Leinemann Partner stands for innovation. Therefore it is a particular pleasure when our clients implement new and innovative ideas together with us. We came across such a project when providing legal support to the Solidbox GmbH, company based in Heek, North-Rhine Westphalia, which is specialised in modular construction systems. Their new concept for efficient modular construction is able to make an important contribution towards relieving the shortage of residential space. Leinemann Partner provided legal support for the company from its founding right up to its establishment on the market. Partner Henrik M. Nonhoff from Leinemann's Düsseldorf office was in charge.

The basic concept of Solidbox is that the company manufactures fully-equipped accommodation containers at its plant. These »boxes« form independent residential units and can also be used as components of larger residential or usable structure, in combination with further boxes. The modular concept enables these »boxes« to be positioned on top of each other or next to each other as is required. This method can be used to create an entire building complex. The best thing about it is that even after their positioning the boxes remain mobile and later on can easily be released from their fixed connection and set up again elsewhere.

The managing director of Solidbox GmbH, Hermann Stegink, who is very experienced in the field of prefabricated concrete elements, originally intended the idea to be used to

meet the future demand for refugee accommodation. Using the solid boxes, Stegink was quickly able to create reasonably-priced temporary living space under consideration of a solid quality standard. Solidbox, however, has since moved on dynamically from its beginnings. In the meantime, the solid boxes are being used to erect entire building complexes for residential housing at an attractive price, for student residences, for care homes, and even for a designer villa. From an optical or technical point of view, these buildings no longer have much in common with simple living containers. With a little design fantasy, the system may be used to create complete buildings which are far from cheap or unimaginative temporary measures, and instead are perceived as buildings with a high architectural quality. Solidbox with its system has now established itself as a real alternative in the field of building construction. A special incentive for contractors is naturally also the fact that the prefabrication in the plant instead of constructing on-site enables a reduction in the construction time of around 80 percent.

Partner Henrik Nonhoff with his Düsseldorf team provided comprehensive legal support during the start-up phase. The team went far beyond construction contract law which is Leinemann's core area of expertise. In addition to the conception and elaboration of the complete set of agreements, which were required for the purchasers and subcontractors involved, Leinemann Partner also secured the fundamentals of the project with regard to company law, competition law and copyright law. The same applies to trademark law matters. Apart from that, the project involved elements of public procurement law, e.g. with regard to approval planning requirements and the approval suitability of the solid boxes. Finally, issues with regard to



Henrik M. Nonhoff,  
lawyer for construction  
and architectural law,  
Düsseldorf

insurance law needed to be resolved, in particular with regard to transport risks in the course of the delivery of the prefabricated modules to the construction site.

Solidbox GmbH is now established on the modular construction and building construction market. The Leinemann team has proudly contributed to this success. Living in a box is a cool living concept and has become a successful business.

Photos: Solidbox GmbH, Leinemann Partner

## Siemens industrial plant Cuxhaven

# Leinemann helps in building the world's largest wind turbine factory



The production hall and all the auxiliary buildings had to be ready for production in only 10 months

The Siemens Group has high ambitions for off-shore wind power. Cuxhaven, on the North Sea shore, is a major location for the off-shore wind industry. The Siemens group had plans since 2017 to build nacelles with a length of approx. 15 m and a diameter of approx. 6.5 m with a weight of 200 tonnes (so-called D7 platform) for off-shore wind turbines. A working group was commissioned to construct a production hall including all auxiliary buildings. The working group partners are the Heitkamp Ingenieur- und Kraftwerksbau and the Ballast Nedam Infra B.V., who instructed Leinemann Partner as their legal advisors. The wind turbines produced in future by the facility will provide up to 7 megawatts and produce up to 32 million kWh of electrical energy per year. The production hall is just as enormous as the nacelles and, without the auxiliary buildings, has a floor area of approx. 332 x 156 m and a height of more than 30 m.

The completion time for the construction project was ambitious. The production hall and all the auxiliary

buildings had to be finished in only 10 months after commissioning of the project. Leinemann Partner started to advise at a very early stage for the working group. After the contracts had been awarded, a number of planning deficiencies became apparent and their correction delayed the project, although the project could not be postponed. Other additional negative factors were unfavourable weather conditions and conflicts with the indoor cranes which were procured separately. In spite of these adverse circumstances, the working group supported the owner to the best of its ability to minimise the negative effects on the schedule. Due to the complex problems, the tight schedule, and the associated risks, the client decided to ask Leinemann lawyer Andreas Jacob to be permanently present at the construction site four days a week. This close connection to the project management enabled the engineers and their lawyer to develop an effective and mutual understanding of the construction task and its contractual requirements.

Meetings were held almost on a daily basis to find solutions at short notice to urgent questions, which were then passed on to the owner. Therefore it was possible to considerably limit project risks and find quick solutions. A lawyer can only offer immediate assistance when the desk of his outside office is located directly in the container of the project management. The experience of the participants left an appetite for more.



Andreas Jacob,  
lawyer for construction and  
architectural law, Berlin



Jarl-Hendrik Kues,  
lawyer for construction  
law, architectural law and  
procurement,  
Frankfurt am Main



Felix Thomas,  
construction lawyer,  
Frankfurt am Main

Photos: Siemens AG, Leinemann Partner

# Good bike

In recent years, the market for public bicycle rental systems has grown significantly. As an additional service provided by the public transport network, a bicycle rental system is a practical solution which helps meet the



Nextbike was awarded the tender for the bicycle rental system in Berlin with Leinemann support against strong competition

challenges posed by modern mobility and environmental protection efforts.

Leinemann Partner is supporting this development at the side of one of the biggest German providers in this field, the internationally active nextbike GmbH based in Leipzig. Nextbike GmbH, with the support of Leinemann, was able to prevail in the procurement process of the bicycle rental system in Berlin against strong competition from state owned Deutsche Bahn. A subsidiary of Deutsche Bahn, DB Rent GmbH, initiated procurement review proceedings against the contract award to nextbike, but remained unsuccessful in the first instance. An immediate further appeal against the decision of the procurement chamber was lodged, but later withdrawn. Since then, the nextbike bicycles have become part of the traffic scene in Berlin. Ralf Kalupner (CEO nextbike GmbH) on the Leinemann team: »I was won over by the short reaction times and the practical legal advice we received.«

The legal advice was not limited to just the procurement procedure, but also covered a number of strategic elements. Since 2018, low-budget suppliers have flooded cities, in the unregulated Asian market with thousands of rental bicycles where they are »abandoned«. In some cities the bicycles are stacked on public roads, are no longer usable and have to be removed by the public authorities. This kind of unwanted scenario could also occur in Germany and Europe. There are already the first reports of similar effects, and the financially strong competition from the Far East has not sought to conceal its plans for expansion. Therefore, intelligent solutions should be implemented quickly to meet this uncontrolled growth which could bring the entire industry into disrepute. It may well be that, according to current legislation, the setting up of a rental bicycle or scooter organisation is in principle covered by the so-called public use of road space. However, when there are significant disruptions to other road users due to the high volume of bicycles or scooters introduced, the status changes to a special use which is then subject to authorisation. German cities are carefully watching the latest developments.



Thomas Kirch, procurement lawyer, Berlin



The Berlin Kammergericht became a celebrated symbol of the rule of law across Germany

## 550 years: Berlin Court of Appeal is the oldest court in Germany

Going back in time to 1468, the twin-cities of Berlin and Cölln had a population of about 8,000, a low figure in comparison to the cathedral city of Cologne with then 40,000. As part of the Margraviate of Brandenburg, Berlin was an outpost of the Holy Roman Empire. While other courts continued to operate outdoors, in Berlin the court adjudicated in the chambers of the ruler of Brandenburg. This resulted in the unique name »Kammergericht« (court in the chambers) which has remained until today. In 2018, this oldest German court still in operation celebrated its 550-year jubilee.

The role of Berlin's highest court is reflected in the chequered history of Berlin and Germany, from the advent of printing technology in the 15th century, the ages of absolutism and enlightenment, both world wars and the modern information technology society of today.

In the 18th century, the court became a celebrated symbol of the rule of law, as Frederick king the Great of Prussia announced on paper that all people are equal before the law, but then proceeded to throw judges of the Kammergericht into the dungeons because they had not resolved a legal dispute in his favour. The councillors of the Kammergericht then laid the basis for conscientious Prussian lawyers who opted for jail rather than submit to the (arbitrary) will of the king. The splendid plenary hall of the 19th-

century Kammergericht building, however, later also served as a backdrop for the show trial against those involved in an unsuccessful assassination attempt on Hitler on July 20, 1944. 156 men and women were convicted for involvement in the attempted coup, and 104 were subsequently executed. Most of the death sentences, around 70, were pronounced in this plenary hall. Today, the Kammergericht fulfils the function of a higher regional court, but retains its special name.

In the court building located at the Kleistpark in Berlin-Schöneberg, the court nowadays rules on questions such as whether parents should be granted access to the Facebook account of their deceased daughter. In this respect, in May 2018, the Kammergericht ruled that this is only allowed when all the contacts of the girl had given their prior approval. In the last instance of appeal, however, the Federal Court took a different view and pointed out that digital content is not to be treated differently than letters or diaries which pass to heirs.

The Berlin Kammergericht therefore reflects more than 500 years of history and tradition. In late 2019, the Kammergericht made headlines, because its IT systems were knocked out by the Emotet virus. It took months to bring the court's IT systems back to work. So there are always new challenges, even after 550 years of legal history.

# »After signing the contract, there is a release of emotions«

With Eva Leinemann in Berlin, Leinemann Partner has an experienced notary who also works as a lawyer

Interview David Goertz // Photographer Markus J. Feger



Leinemann library in Berlin: a perfect place to conclude a contract

*LP Magazine:* **Leinemann Partner has offered notary services for a number of years now. How do your clients respond?**

*Eva Leinemann:* Initially it was difficult to make the notary's office known due to the fact that according to our code of conduct a notary is not allowed to advertise. However, word of mouth is a powerful medium. Today, clients appreciate that our firm took the step to offer these services. Many tasks also come from colleagues who value our services and send their clients to me for notarial matters. I regard this as recognition and a vote of confidence.

**Notaries are not in short supply. Why should clients opt for the Leinemann notary's office?**

Notarisation is only required for important matters, i.e. the founding of companies, real estate acquisition, marriage contracts, wills, etc. People understand that a contract which requires notarisation has an important influence on your life. They frequently have ideas about what they want, but do not know how to realise it in the best possible way. In such a situation it is essential to have a contact person who will listen, understand, and find solutions for the identified problems.



»Now word has gone round that our notary's office can manage all types of notarisation.«

Eva Leinemann, notary, Berlin

acts for companies, a notary is also active in private matters for individual persons who are not always employees of client-companies but may also be friends of clients, their children, parents or neighbours. Of course, my business largely depends on referrals from our client base of the law firm, which in recent years has increased significantly.

In fact, some of the people who come are quite different to the business clientele of the law firm. The range is enormous and has also surprised me. One experiences many more private matters, for example, when a will has to be drawn up, a child to be accepted or a family plans to acquire a property. This has a lot to do with trust and is also very pleasant.

**Not all notaries appear to be aware of the social responsibility that comes with their office and prefer to decline when in individual cases the statutory scale of fees is not very promising. How is your experience in this respect?**

Any person may come to our office for an authentication or notarisation. We take the responsibility of our office very seriously. Therefore, probably an above-average number of voluntary association board members is coming to us. This is an area where the resolutions of an association have to be carefully inspected before notification in the German register of associations is made, and for this work the notary's fee comes out fairly small. As notaries and lawyers, we assist the small company, which, for example, has not received its 20,000 euro payment. We are obliged to also offer notarisation services when the fee is very small. We are happy to do this.

As lawyers, we have years of experience listening to the wishes of our clients and putting these down in contract clauses while bearing risks in mind. This is something those involved in the notarisation process can depend on.

**You work as a notary and a lawyer at the same time. Is that possible? In the end, as a notary, you are obliged to be objective, whereas, as a lawyer, you must exclusively represent the interests of your clients.**

In several German states as well as in Berlin there is a good tradition of simultaneously being a lawyer and a notary. I believe it widens our horizons. When acting as notaries, we have to be neutral as required by our official status, but being lawyers, too, we are better able to understand how our colleagues think and act when they advise the parties involved in the notarisation process. The »change of roles« is not a problem. The notary is a neutral authority and the mediator between the parties. The notary's office is not designed to handle disputes, but to draw up contracts, which, by the way, is an important aspect of the work we do as lawyers. The difference is, that in the notary's office, the participants have a positive starting

point, such as when a family is acquiring some real estate or a company is being founded. This positive experience is naturally also a pleasure for us.

**Are you allowed, for example, to notarise purchase contracts for real estate and beforehand advise to clients as a lawyer in the development of the project and also provide support later on during the construction phase?**

In connection with a contract, a notary is not permitted to advise one of the parties earlier and then notarise the contract between the two sides. When one side has already received legal advice from a lawyer, the law firm providing the advice is not permitted to have a firm's notary seal the contract. The neutrality of the notary prohibits his/her prior instruction by one of the parties.

**As a notary, you have been publicly appointed. That also means that Leinemann Partner is now available to the general public. Who comes to the notary's office and what services do they require?**

Anything which has to be notarised or authenticated can turn up in our office. While the law firm essentially

# The Leinemann Foundation for Education and Art

**F**ounded in 2008 by Eva and Ralf Leinemann, the Leinemann Foundation for Education and Art is a non-profit foundation established under German law. Its aim is to promote art and culture, in particular the fine arts and the preservation of historical books, book collections and libraries. The Foundation's assets include numerous paintings and sculptures by contemporary artists plus a considerable collection of historical books dating from the years 1822 to 1955, which made up the major part of the archives of the former Carl Heymanns Verlag in Cologne, and were donated to the Foundation.

Since its establishment, the Foundation has promoted annual competitions in collaboration with universities of fine arts and the associations supporting them, providing a platform for young, talented artists. Every competition is documented by a lavishly designed catalogue. Moreover, the Foundation is funding individual art shows and artists with selected projects, for example by supporting an exhibition, financing a catalogue, or providing other funding. In 2011, a scholarly symposium was promoted as part of the 150th anniversary of the Nationalgalerie in Berlin and, in 2019 the foundation was exclusive sponsor of the Caillebotte show at the Nationalgalerie. The Foundation's Board of Directors regularly consults on the applications for new projects, scholarships

and exhibition support. In its support of education, the Foundation currently focuses primarily on the fields of construction law and public procurement law, and civil engineering. The Foundation generously supports the Baurechtlicher Forschungspreis bestowed by Deutscher Baugewerkschaftstag e.V., which is awarded every two years for Master's theses or dissertations on construction law or construction practice. It also supports academic research projects on construction practices specifically at the Berlin School of Economics and Law, and has for years helped finance the Federal Government's Deutschland-Stipendium student grant scheme. In order to finance its own charitable activities the Foundation relies both on individual donations and on revenue generated by its assets, which include substantial capital resources and widely diversified, profitable investments.

Board members of the Leinemann Foundation for Education and Art are Dr. Eva-Dorothee Leinemann and Prof. Dr. Ralf Leinemann. Many artworks from the collection of the Leinemann foundation are displayed in the six offices of Leinemann Partner in Germany. **rl**



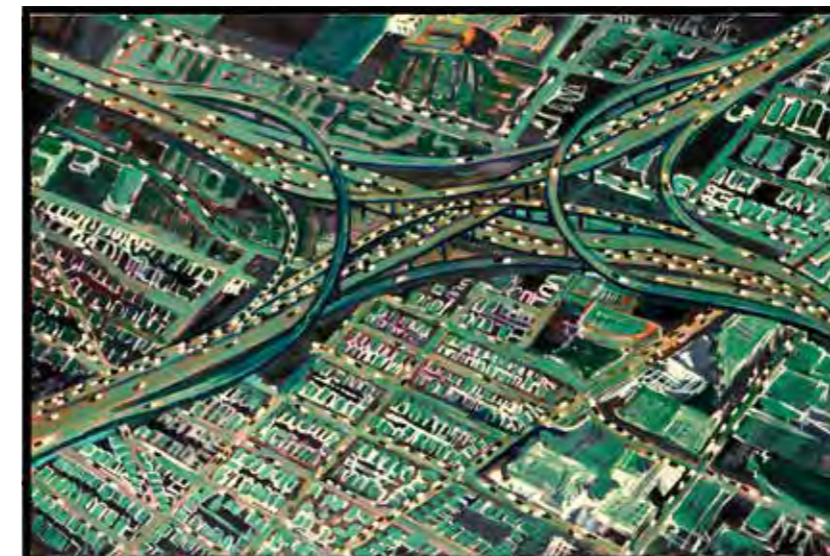
**Adel Abdessemed:**  
Mappemonde (2013)  
used sheet steel, painted,  
diameter 172cm



**Yin Xiuzhen,** Portable City: Madrid (2012);  
suitcase, used clothes, sound installation;  
100 x 151 x 87 cm



**Eberhard Havekost,** MIAMI (2007), oil on canvas,  
171 x 106 cm



**Yutaka Sone,** 405-10, (2015),  
acryl on canvas, 122 x 183 cm



**Wolfgang Laib,** Haus (1990), bees wax,  
20 x 13 x 65 cm

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