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DOING BUSINESS IN GERMANY





WHAT KIND OF COMPANY FOR YOUR BUSINESS IN GERMANY?

Any entrepreneur who wishes to start a business in Germany may do so. There are generally no restrictions limiting the establishment of new companies.

When you set up a business, you have to choose what kind of company to set up. There are several considerations to take into account:

- Initial share-capital, the number of shareholders,
- Whether there are any partners,
- The responsibilities of the management,
- The tax regime for the management, etc.
- Level of limitation of liability

Foreign investors can choose between a variety of legal forms for conducting business in Germany. There is no specific investment legislation in Germany, nor is a minimum percentage of German shareholdings required for foreign entrepreneurs.

FORMS OF CORPORATION IN GERMANY

When choosing the legal form of the company, a corporation is usually the best option for larger, established companies. A corporation is a legal entity, meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. The corporation itself concludes contracts, holds assets and is liable for taxation.

Four Different Forms of Corporations – Quick Facts:

Legal/Establishment Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability	Establishing Formalities
Limited Liability Company (GmbH)	One partner	EUR 25.000	Liability limited to share capital	Moderate
Limited Liability Entrepreneurial Company ("Mini GmbH")	One partner	EUR 1,00	Liability limited to share capital	Low-moderate
Stock Corporation (AG)	One partner	EUR 50.000	Liability limited to share capital	Moderate-high
Partnership Limited by Share (KGaA)	Two partners: general partner and limited shareholder	EUR 50.000	General partner: personal unlimited liability Limited shareholder: limited share liability	Moderate-high



FORMS OF PARTNERSHIP

The main feature of a partnership is the personal commitment of the partners to their working efforts to the partnership.

In contrast to corporations, partnerships are not independent legal entities but associations of people. In partnerships, the individual partners responsible for the liabilities of the company (including private assets) act for the company. Limitations of liability for individual partners are only possible to a limited extent.

Four Different Forms of Partnerships – Quick Facts:

Legal/Establishment Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability	Establishing Formalities
Civil Law Partnership (GbR)	Two partners	Not required	Personal unlimited liability	Very low
General Commercial Partnership (oHG)	Two partners	Not required	Personal unlimited liability	Low-moderate
Limited Partnership (KG)	Two partners: general partner and limited partner	Not required	General partner: personal unlimited liability Limited partner: limited share liability	Low-moderate
GmbH & Co. KG	Two partners: general partner (GmbH) and limited partner (the general partner is typically the limited partner of the KG)	Not required	General partner (GmbH): personal unlimited liability Limited partner: limited share liability	Moderate-high

KINDS OF BRANCHES ESTABLISHMENTS

Any foreign company with a head office and registered business operations outside of Germany can establish a German branch office. A branch office is a suitable business form for a foreign company wanting to establish a presence in Germany for the purpose of initiating business and maintaining contacts with business partners.

Two Different Forms of Branch Offices – Quick Facts:

Legal/Establishment Form	Legal Liability	Minimum Share Capital	Number of Persons Required	Establishing Formalities
Autonomous Branch Office (Selbständige Zweigniederlassung)	Subject to the head office legal company form	None required	Minimum one person	Moderate
Dependent Branch Office (Unselbständige Zweigniederlassung)	Subject to the head office legal company form	None required	Minimum one person	Very low

Your best adviser is your accountant! Do not hesitate to contact him or her!



DOING BUSINESS IN GERMANY WITH A PERMANENT ESTABLISHMENT

Depending on the extent of your business involvement in Germany, there are different possibilities for your future firm:

1. Either the deployment of the activity without a permanent establishment (see relevant information sheet)
2. Or the creation of a permanent establishment in Germany (the subject of this information sheet):
 - a) As a branch, or
 - b) As a subsidiary

STANDARD LEGAL OBLIGATIONS AND FORMALITIES

Branches or subsidiaries require:

- Registration at the Commercial Court Registry (Handelsregister);
- A VAT ID number (identification number unique to each business) and an EU intracommunity registration for firms liable to VAT;
- Filing of German financial statements (for the branch and for the whole entity) at the Commercial Court Registry;
- Registration with the German tax authorities;
- Notarization required for set up and appointment of representatives

A BRANCH OF A FOREIGN COMPANY

Simplified legal form

- No legal entity in Germany distinct from the foreign company;
- No articles of association;
- No authorized share capital;
- Registration of employees with Social Security (gesetzliche Krankenkassen), pension organisations, employment office (Arbeitsamt), and benefits, supplementary protection and pensions;

Activity

- A Branch is more flexible and less expensive than a subsidiary and enables commercial activity to be carried out.
- Under the full and integrated responsibility of the foreign company.
- Foreign company is fully liable for the dealings of the branch

Status of the legal representative

- Appointment of a representative of the head office or of a branch manager registered at the Commercial Court Registry;
- The legal representative of the branch may be either an employee or a legal representative of the foreign company. If he/she is a non-EU citizen, then he/she should have a work permit authorizing him/her to run a branch in Germany. However bilateral international agreements may stipulate specific conditions as well.

Tax status

- The activity of the German Establishment is the criteria for assigning its income;
- The profits of the branch are normally taxable in Germany unless there is an international tax agreement;



- For companies outside the European Union, a tax representative should be appointed for payment of VAT;
- The branch is liable to all German taxes.

Accounting

- A separate accounting is necessary.
- Accounting will be directly consolidated into the accounts of the foreign company in its country of origin.

A SUBSIDIARY OF A FOREIGN FIRM

Specific legal points

- Legal form independent from that of the foreign company (GmbH, GmbH & Co. KG, KG etc.). (See relevant fact sheet)
- Obligatory registration to be made through the relevant Court Registry (Amtsgericht);
- At the Commercial Court Registry (Amtsgericht);
- Registration of employees with Social Security (gesetzliche Krankenkassen), pension organisations, employment office (Arbeitsamt) etc. (See relevant information sheet)
- For controlling directors, registration with specific agencies;
- With German tax authorities;
- Minimum share capital required depending on legal form

Activity

A full commercial independency. A subsidiary of a foreign company can independently carry out deregulated commercial, financial or legal operations. Depending on legal form liability is limited to the operations of the subsidiary.

The Manager

The Manager can be:

- An employee of the German or foreign company,
- An agent of the parent company or another subsidiary,
- A German or foreign person with qualifications authorizing him/her to carry out commercial activity (in accordance with bilateral international agreements).

Fiscal and accounting status

A German company that is a subsidiary of a foreign company is liable to the same tax and accounting obligations as German companies (see relevant information sheet), in particular income tax, VAT, local taxes, and bookkeeping and accounts.



EMPLOYMENT CONTRACTS AND COMPLIANCE WITH THE MAIN RULES OF GERMAN LAW

LAW/COLLECTIVE AGREEMENTS/EMPLOYMENT CONTRACTS

The relationship between an employee and an employer is ruled by:

- **The Employment Law:** it defines the obligations related to all employers
- **The Collective Agreement related to each area of activity:** it particularly points out:
 - The qualification and the minimum wage
 - The pension and health insurance organizations
 - Etc.
- **The Employment Contract:** it individualizes the work relationship by meeting with the Employment Law and the collective agreement.

EMPLOYMENT CONTRACTS

Germany has different models of employment, providing investors with flexible employment solutions – especially in the starting phase of the business:

- Regular Employment (unrestricted)
- Fixed-term contracts
- Mini and Midi Jobs

For information: In principle, the contract can be formulated in any language; and some specific actions must be taken prior to the hiring of any non-European citizen or any employee coming from a country that has recently joined the European Union.

There is no legally fixed form for a contract of employment. Nonetheless, it is highly advisable to define certain points, such as:

- The description of the location and activity;
- The date of appointment and notice periods (in the case of fixed-term employment contracts the duration of the contract);
- The daily or weekly working time;
- Arranging of a probationary period;
- The level of the wage (gross) and possible bonuses;
- Vacation entitlement;
- Non-disclosure agreements or non-compete obligations;
- Contractual penalties

HOLIDAY PAYABLES

Full-time employees working six days per week are entitled to a minimum of 24 paid vacation days per year. Accordingly, full-time employees working five days per week are entitled to a minimum of 20 days per year.

The number of public holidays varies from one federal state to another, with a minimum nine public holidays to a maximum 13 holidays.



STATUTORY WORKING TIME

Working hours are flexible in Germany. Under German labor law, employees are allowed to work eight hours per day (48 hours per week). Overtime has to be compensated for with additional time off. An overtime bonus is possible but it is not legally specified.

The statutory amount of work breaks depends on the total number of hours worked per day.

BENEFITS IN KIND

A benefit in kind is the provision of some goods or services free of charge from the company to the employees. It is considered as a salary supplement and is therefore liable to Social Security contributions and income tax. It may include:

- Provision of personal accommodation
- Meals
- A company car used for personal purposes
- A phone, internet link, a computer
- Any other personal benefit granted to the employee.

Don't hesitate to contact your Chartered Accountant for the assessment of these benefits!

ISSUING PAYSLEIPS IS COMPULSORY

Your accountant will prepare payslips for your employees every month according to the regulations and laws in force in Germany.

Employees in Germany receive a net wage or salary from which tax and social security contribution have already been deducted. The employer withholds the tax that the employee is required to pay and transfers the money directly to the tax office (Finanzamt). Therefore, all employees must be registered with the local tax office.

SOCIAL SECURITY CONTRIBUTIONS

Social security contributions are made up of: Health insurance, Nursing Care insurance, Pension insurance, Unemployment insurance, and Accident insurance.

Generally speaking, social security contribution are roughly shared equally by employer and employee. Employer's share: approximately 21 percent of the employees gross wage.

SOME IDEAS FOR REDUCING YOUR EMPLOYMENT COSTS

Four Main Groups of Labor-Related Incentive Programs

The range of programs offered can be classified into four main groups – programs focusing on: 1.) recruitment support, 2.) training support, 3.) wage subsidies, and 4.) on-the-job training.

Germany offers numerous incentives for foreign investors. There is a variety of programs available, designed to fit the needs of diverse economic activities at different stages of the investment process.



APPOINTING A STATUTORY AUDITOR: A LEGAL OBLIGATION IN GERMANY

WHAT LEGAL ENTITIES MUST APPOINT AN AUDITOR?

Appointing a legal auditor in Germany is obligatory for:

Commercial companies

- Limited liability companies (GmbH, GmbH & Co. KG, KG) and Non-profit organizations exceeding two of the following three criteria in two subsequent years or in the first year of inception:
 - Revenue > 12.000.000 €
 - Assets > 6.000.000 €
 - Number of employees > 50

The appointment will take place on the following financial year.

Other legal entities

- European companies
- Economic interest groups issuing bonds or employing at least 100 employees
- Public companies always
- Credit institutions always
- Financial Services firms always
- Leasing, Factoring, Financial Advisory always

Subsidiaries or branches

A subsidiary is a legal entity, with a full judicial personality, and must appoint an auditor according to its legal status and whether it fulfills the criteria listed above.

A branch is an establishment lacking any judicial personality, operated by a company does not require an audit, except it is regulated by the Federal Financial Supervisory Authority (BaFin)

Is a second auditor NEEDED?

German laws do not require a second auditor.

APPOINTING VOLUNTARILY A LEGAL AUDITOR

Even if it has no legal obligation, a company may choose to appoint an auditor, to ensure that the accounts give a true and fair view of the company's financial position.

The terms of appointment

For each auditor's mandate, the company must:

- Appoint a statutory auditor who will audit the company. The statutory auditor has to be registered with the German Chamber of Auditors ("Wirtschaftsprüferkammer").

He can be:

- An individual
- Or a legal entity (auditing firm)



The auditor needs to be appointed annually. Once an auditor has been appointed and engaged, he can't be changed for the engagement.

Decision of the shareholders

Upon the foundation of the company, the auditor may be named in the articles of association.

At any other time, the auditor may be appointed during the Annual General Meeting (AGM) or by court order, at the request of any shareholder (subject to achieving the required percentage of votes for some types of company).



HOW TO READ FINANCIAL STATEMENTS IN GERMANY

German balance sheet in general according to german law HGB § 266 (2), (3)

Unternehmen xxx

Handelsbilanz zum 31.xx.20xx

Aktiva

31.xx.20xx

31.xx.20xx

EUR

EUR

A. Anlagevermögen

I. Immaterielle Vermögensgegenstände

1. Selbst geschaffene gewerbliche Schutzrechte und ähnliche Rechte und Werte
2. entgeltlich erworbene Konzessionen, gewerbliche Schutzrechte und ähnliche Rechte und Werte sowie Lizenzen an solchen Rechten und Werten
3. Geschäfts- oder Firmenwert
4. geleistete Anzahlungen

xx

xx

II. Sachanlagen

1. Grundstücke, grundstücksgleiche Rechte und Bauten einschließlich der Bauten auf fremden Grundstücken
2. technische Anlagen und Maschinen
3. andere Anlagen, Betriebs- und Geschäftsausstattung
4. geleistete Anzahlungen und Anlagen im Bau

xx

xx

III. Finanzanlagen

1. Anteile an verbundenen Unternehmen
2. Ausleihungen an verbundene Unternehmen;
3. Beteiligungen
4. Ausleihungen an Unternehmen, mit denen ein Beteiligungsverhältnis besteht
5. Wertpapiere des Anlagevermögens
6. sonstige Ausleihungen

xx

xx

B. Umlaufvermögen

I. Vorräte

1. Roh-, Hilfs- und Betriebsstoffe



2.	unfertige Erzeugnisse, unfertige Leistungen		
3.	fertige Erzeugnisse und Waren		
4.	geleistete Anzahlungen		
II.	Forderungen und sonstige Vermögensgegenstände		
1.	Forderungen aus Lieferungen u. Leistungen		
2.	Forderungen gegen verbundene Unternehmen		
3.	Forderungen gegen Unternehmen, mit denen ein Beteiligungsverhältnis besteht		
4.	Sonstige Vermögensgegenstände		
III.	Wertepapiere		
1.	Anteile an verbundenen Unternehmen		
2.	sonstige Wertpapiere		
IV.	Kassenbestand, Bundesbankguthaben, Guthaben bei Kreditinstituten und Schecks		
		xx	xx
C.	Rechnungsabgrenzungsposten		
D.	Aktive latente Steuern		
E.	Aktiver Unterschiedsbetrag aus der Vermögensverrechnung		
		xx	xx
Passiva			
		30.xx.20xx	30.xx.20xx
		EUR	EUR
A.	Eigenkapital		
I.	Gezeichnetes Kapital		
II.	Kapitalrücklage		
III.	Gewinnrücklagen		
1.	gesetzliche Rücklage		
2.	Rücklage für Anteile an einem herrschenden oder mehrheitlich beteiligten Unternehmen		
3.	satzungsmäßige Rücklagen		
4.	andere Gewinnrücklagen		
IV.	Gewinnvortrag/Verlustvortrag		
V.	Jahresüberschuss / Jahresfehlbetrag		
		xx	xx
B.	Rückstellungen		
1.	Rückstellungen für Pensionen und ähnliche Verpflichtungen		
2.	Steuerrückstellungen		
3.	sonstige Rückstellungen		
		xx	xx


German balance sheet in general according to german law HGB § 266 (2), (3)
Company xxx

Balance sheet xx/xx/20xx

Assets

		xx/xx/20xx	xx/xx/20xx
		EUR	EUR
A. Fixed assets			
I. Intangible assets			
1.	Internally generated industrial and similar rights and values		
2.	purchased concessions, trademarks and similar rights and assets		
3.	Goodwill		
4.	Advances paid on intangible assets		
		XX	XX
II. Tangible assets			
1.	Land, land rights and buildings including buldings on third party land		
2.	Technical equipment and machinery		
3.	Other equipment, factory and office equipment		
4.	Advance payments and plant and machinery in process of construction		
		XX	XX
III. Financial assets			
1.	Shares in affiliated companies		
2.	Loans due from affiliated companies		
3.	Investments		
4.	Loans due from other group companies		
5.	Security investments		
6.	Other loans		
		XX	XX
B. Current assets			
I. Inventories			
1.	Raw materials and supplies		
2.	Work-in-progress		
3.	Finished goods and merchandise		
4.	Advance payments		
II. Accounts receivable and other assets			

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1.	Accounts receivable from trading		
2.	Accounts due from affiliated companies		
3.	Accounts due from other group companies		
4.	Other assets		
III.	Securities		
1.	Shares in affiliated companies		
2.	Other short term securities		
IV.	Cash in hand, central bank balances, bank balances and checks		
		xx	xx
	C. Prepaid expenses		
	D. Active deferred taxes		
	E. Positive difference from asset allocation		
		xx	xx
Liabilities and Equity			
		xx/xx/20xx	xx/xx/20xx
		EUR	EUR
A. Shareholders' equity			
I.	Capital subscribed		
II.	Capital surplus		
III.	Earnings reserves		
1.	Legal reserve		
2.	Reserve for shares in a controlling or majority interested company		
3.	Statutory reserves		
4.	Other earnings reserves		
IV.	Retained earnings/ accumulated deficit, brought forward		
V.	Net income / net loss	xx	xx
	B. Provisions and accrued liabilities		
1.	Provisions for pensions and similar obligation		
2.	Accrued taxes		
3.	Other provisions and accrued liabilities	xx	xx
	C. Liabilities		
1.	Loans of which convertible		
2.	Liabilities due to banks		
3.	Advance payments received on account of orders		

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- 4. Trade accounts payable
- 5. Notes payable
- 6. Accounts due to affiliated companies
- 7. Accounts due to other group companies
- 8. Other liabilities, thereof for taxes, thereof for social security

XX XX

D. Deferred charges

E. Taxes passive deferred

XX XX





German profit and Loss Account in general according to german law HGB § 275 (2)

Firma xxx
Gewinn und Verlustrechnung
Jahresabschluss xx.xx.xxxx

Company xxx
Statement of income
Financial statement xx.xx.xxxx

1. Umsatzerlöse

1. Sales

2. Erhöhung oder Verminderung des Bestands an fertigen und unfertigen Erzeugnissen

2. Increase or decrease in finished goods and work- in- progress

3. Andere aktivierte Eigenleistungen

3. Own work capitalised

4. Sonstige betriebliche Erträge

4. Other operating income

5. Materialaufwand

5. Cost of materials

- a) Aufwendungen für Roh-, Hilfs- und Betriebsstoffe und für bezogene Waren
- b) Aufwendungen für bezogene Leistungen

- a) Cost of raw materials, consumables and supplies and of purchased merchandise
- b) Cost of purchased services

6. Personalaufwand

- a) Löhne und Gehälter
- b) soziale Abgaben und Aufwendungen für Altersvorsorge und für Unterstützung, davon für Altersvorsorgung

6. Personnel expenses

- a) Wages and salaries
- b) Social security, pension and other benefit costs, thereof for pensions

7. Abschreibungen

- a) auf immaterielle Vermögensgegenstände des Anlagevermögens und Sachanlagen
- b) auf Vermögensgegenstände des Umlaufvermögens , soweit diese die in der Kapitalgesellschaft üblichen Abschreibungen überschreiten

7. Depreciation, amortisation costs and other write-offs

- a) on intangible assets and plant and equipment
- b) on current assets to the extend that they exceed provisions normally recorded by the company

8. Sonst. betr. Aufwendungen

8. Other operating expenses

9. Erträge aus Beteiligungen, davon aus verbundenen Unternehmen

9. Income from investements, thereof from affiliated companies

10. Erträge aus anderen Wertpapieren und Ausleihungen des Finanzanlagevermögens, davon aus verbundenen Unternehmen

10. Income from other long-term securities and loans, thereof from affiliated companies

11. sonstige Zinsen und ähnliche Erträge, davon aus verbundenen Unternehmen

11. Other interest and similar income, thereof from affiliated companies

12. Abschreibungen auf Finanzanlagen und Wertpapiere des Umlaufvermögens

12. Write-offs of financial assets and marketable securities

13. Zinsen und ähnliche Aufwendungen, davon an verbundene Unternehmen

13. Interest and similar expenses, thereof to affiliated companies

14. Steuern vom Einkommen und vom Ertrag

14. Taxes on income

15. Ergebnis nach Steuern

15. Earning after taxes

16. Sonstige Steuern

16. Other taxes

17. Jahresüberschuss/ Jahresfehlbetrag

17. Net income / Net loss