

DOING BUSINESS IN GERMANY



COMPANY FORMATION IN GERMANY

FORMS OF CORPORATION IN GERMANY

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 Shares (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 IN GERMANY

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

Legal/Establishment Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability	Establishing Formalities
Civil Law Partnership (GbR)	Two partner	Not Required	Personal unlimited liability	Very Low
Civil Law Partnership (GbR)	Two partner	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 liability	Low-Moderate

			partner: limited share liability	
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

Taxation of a Partnership

The partnership itself is not taxed (as is the case with corporations), but the individual partners. The taxable profit is determined at the level of the company and allocated to the partners according to their shares. The partnership itself is only subject to trade tax.

The different kinds of partnerships differ primarily in terms of the contingent liabilities of the partners and the necessary registration obligations.

The average tax burden on companies is less than 30 percent. In some regions of Germany, due to a locally variable rate of trade tax, it is under 23 percent. The tax rate to which a partner of a partnership is subject can be optionally adjusted to the tax rate of corporations.

Branch Office

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.

In Germany, there are two kinds of branch establishments which primarily differ due to the degree of the independence from the head office company:

- Autonomous Branch Office
- Dependent Branch Office

Legal/Establishment Form	Legal Liability	Minimum Capital	No. of Persons Required	Establishing Formalities
Autonomous Branch Office	Subject to the head office legal company form	None Required	Minimum One Person	Moderate

Dependent Branch Office	Subject to the head office legal company form	None Required	Minimum One Person	Very Low
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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 intra community 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 CONTRACT

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

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.

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.

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