

## Legal forms of Doing Business in Germany

Foreign companies are basically entitled to pursue their own business interests within the Federal Republic of Germany. The regulation of the right of establishment applies to all companies of EU/EEA member states. In addition, agreements have been concluded between the Federal Republic and several other countries, which are essential to the citizens of those countries seeking to do business in Germany. Such agreements are, for example, the agreements on Double Taxation and the agreements on the Right of Establishment Convention and the Promotion of Investment.

The following sections will present only the business forms most commonly found in the Federal Republic of Germany. The Association of European Economic Interests will not be addressed as it is not allowed to pursue any business activities of its own, but rather is intended to provide support for the business activities of its members. The establishment of a *Kommanditgesellschaft auf Aktien* (limited partnership on shares), a public trust, or participation in a co-operative or business association is rarely considered by foreign investors.

In 1994, the right to form non-business partnership associations was adopted into German law. With this legal form, individuals of specific professions (e. g. medical doctors, attorneys, engineers) have the opportunity to establish a company, which is similar in form to the German *Offene Handelsgesellschaft (OHG)* (general partnership). An important aspect of this regulation is that the partners are able to limit their liability.

German law recognizes the business forms of small businesses and of registered, commercial businesses.

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### [1. Small Businesses](#)

A small business in Germany is defined as a business operation which, due to its nature and scope, does not require a commercial organisation. This is determined by the sales and turnover, the business assets, the number of transactions, the number of employees, the variety of business activities, and additional other factors. The particular situation of the individual business is always the deciding factor.

A small business may be operated by one private individual or by several individuals forming a *Gesellschaft des bürgerlichen Rechts* (civil law partnership). The accounts and official papers of any small business must contain the proprietor–s full first and surname. In the case of a civil law partnership, the full names of all members must be stated. This form of business is not allowed to operate under a commercial name.

It is not obligatory that a small business, operated by a private individual or through a civil law partnership, is registered in the Commercial Register. A small business may, however, choose to be listed in the Commercial Register and, through such listing, obtain the status of a registered merchant or, in the case of a civil-law partnership, obtain the legal form of a general (*OHG*) or limited partnership (*KG*) (see description below).

## 2. Registered Commercial Businesses

A registered commercial business is any individual or partnership organization whose nature and scope requires a commercial organisation. In cases of doubt, a recommendation from the Chamber of Industry and Commerce will be requested.

A commercial business is to be entered under its commercial name (= *Firma*) in the Commercial Register of the local court at the corporate seat of the business. The application must be witnessed and signed by an authorized notary public. Special instructions are to be given in writing or by a – not necessarily German - notary, a comparable legal advisor or a consular official.

A commercial business may take the form of a sole proprietor, an *Offene Handelsgesellschaft (OHG)* (general partnership), or a *Kommanditgesellschaft (KG)* (limited partnership), which have the form of a *GmbH & Co. KG*.

The *Gesellschaft mit beschränkter Haftung (GmbH)* (limited liability company), the *Aktiengesellschaft (AG)* (joint-stock company, Inc.), and the *Kommanditgesellschaft auf Aktien (KgaA)* (limited partnership on shares) are all treated by the law as commercial businesses. All members of these business forms must be registered in the Commercial Register.

In the following sections the possible operational forms will be explained separately.

## 3. Sole Proprietors

As indicated by the name, this form always has one, sole proprietor. No limit is placed on the proprietor's liability. The name of the firm, the legal form of the business, the location of the business office, the court of registration, as well as the number under which the firm is listed in the Commercial Register, must be stated on all business correspondences and letterheads.

## 4. General Partnership (*Offene Handelsgesellschaft, OHG*)

A general partnership (OHG) must consist of at least two partners. No limit is placed on the liability of each partner. Legal entities may also be members of an OHG, regardless of whether they were established under German or foreign law (comparable to a GmbH).

In principle, the right to represent the general partnership (OHG) as a whole, may be exercised individually by all partners. The joint representation of the partnership by several partners or the exclusion of individual partners from representing the partnership, however, can be specified in the memorandum of association.

All business correspondences and the letterhead must state the firm, the legal form and the location of the partnership, the court of registry, as well as the registration number.

In the event that all partners in an OHG are legal entities and, hence, their liability is automatically limited, reference must be made to this by an appropriate supplement to the company name (e.g. "GmbH & Co. OHG–). In addition, all business correspondences of partnerships of this type must also contain the business names of the partners (*Firma*) and their court of registration as well as the number under which the firm is listed in the Commercial Register.

## 5. Limited Partnership (*Kommanditgesellschaft, KG*)

In a limited partnership (KG), at least two partners are necessary, one of which must have unlimited liability (*Komplementär*) and one of the limited partners must have liability not exceeding the value of his/her shares in the company (*Kommanditist*). The amount of liability is not fixed by law. Legal entities, regardless of whether they are established under German or foreign law (see GmbH below), may also be partners in a KG. In the situation where the only partner with unlimited liability of a KG is required to have limited liability, indications to this must be made by an appropriate supplement to the company's name, such as the commonly used "GmbH & Co. KG–. All business transactions and correspondences of limited partnerships (KG) must contain the same information as the correspondences of general partnerships.

As a general rule, the right to represent the company is held by the partners with unlimited liability (*Komplementäre*) only.

## 6. Limited Liability Company (*Gesellschaft mit beschränkter Haftung, GmbH*)

The limited liability partnership (GmbH) is a legal entity in its own right. The required capital of a GmbH must total a minimum of 25,000 euro at the time of the establishment of the company due to liability reasons. The original capital contribution of each partner must be at least 1 euro.

The contributions of partners are allowed to be made in kind. In this situation, the items used to make the contribution together with their estimated values must be stated in the partnership contract. The assessed value of such contributions must be stated in a special report concerning the company's foundation on the basis of non-cash contributions.

The minimum payment to found a GmbH is one quarter of each original capital share, provided these payments are made in cash and not in kind. The total sum, including the full value of all payments made in kind, must, nevertheless, be at least half of the minimum capital requirement (=12,500 euro). Failure to pay the nominal capital amount will in no way reduce the liability of the individual. As individuals, partners are not directly liable to the company's creditors and, therefore, risk only the loss of their original contribution.

A GmbH may also be founded by a single individual as a so-called "*Ein-Mann-GmbH*" (One-man-GmbH). In the event that the nominal capital contribution for an *Ein-Mann-GmbH* is not paid in full, collateral is required for the outstanding balance.

Legal entities, regardless if they are licensed under German or foreign law, may also be members of a GmbH.

Foreign legal entities may be recognized in the Federal Republic of Germany if they are based in their native country and if their recognition would not offend common practices or be in violation of German law. The recognition of foreign legal entities and other trade associations is usually ensured by international treaties and agreements.

The GmbH is judicially and non-judicially represented by its managing director(s) (*Geschäftsführer*). These individuals need not reside in the Federal Republic and may, though they are not required to, be partners of the company. The directors are to be appointed and dismissed by the corporation meeting of the partners and are to be listed in the Commercial Register.

All business correspondences and letterhead must contain certain information about the company including the firm (= name of the company), the legal form of the company, the location and court of registration, its registration number in the Commercial Register, and the first and surname(s) of the managing director(s).

#### 7. entrepreneurial company at limited liability (*Unternehmergeellschaft (UG) haftungsbeschränkt*)

Since November 1, 2008, a new form of the GmbH is available, the entrepreneurial company at limited liability (*Unternehmergeellschaft (UG) haftungsbeschränkt*). It is a simple version of a GmbH and can be founded with a capital of at least 1 euro. The incorporation is easier and cheaper than the incorporation of a GmbH.

In order to achieve the capital of a GmbH one day, the *UG haftungsbeschränkt* is legally required to set aside reserves of a fourth of the annual surplus. Having achieved the capital of a GmbH, it may apply for a change of name and legal form with the Register Court.

#### 8. Joint-Stock Company (*Aktiengesellschaft, AG*)

A joint-stock company (AG) is a legal entity in its own right. The minimum capital which is 50,000 euro consists either of par value shares having a minimum value of 1 euro per share or of no-par value shares.

An AG can be founded by one single individual. All individuals, including legal entities, may be members of an AG. It is to be both judicially and non-judicially represented by the management board, which may consist of one or more persons appointed by the supervisory board. The supervisory board must consist of at least three members. For larger joint-stock companies (AG) other regulations determine the minimum number comprising the supervisory board. The main duty of the supervisory board is to supervise the business management of the manager or management board. Like the business correspondences and letterhead of a GmbH, those of an AG must contain certain information: the firm, the legal form of the company, the location and court of registration, its registration number in the Commercial Register, the first and surname(s) of all members of the management board and the first and surname of the chairman of the supervisory board.

Information regarding the establishment and costs associated with the establishment can be obtained from the Chamber of Industry and Commerce.

#### 9. Branch Offices

Registered commercial businesses – both German and foreign – may establish independent branch offices which qualify for registration in the Commercial Register (conditions: own possession, separate bookkeeping plus the manager has certain

freedom in managing the branch office; decisions will be made according to the situation of each case). Independent branches of this type normally carry the same name as the head office and may or may not include a supplementary designation indicating that it is a branch. In certain situations a branch may be permitted to operate under a different commercial name.

#### 10. Dependent Branch Offices - Permanent Establishments - Representative Offices

A dependent branch office, as opposed to a registered commercial branch office, has few if any commercial operations of its own, such as purchasing, sales or service offices, or delivery depots, etc. Such offices are not eligible for registration in the Commercial Register, but must be reported to the local Department of Business (*Gewerbeamt*). An official certificate stating that the head office is listed in the Commercial Register or in the Register of Partnerships in the native country, must be submitted in person or through a proxy.

In German law the term "permanent establishment" is not treated in the same manner for both legal and tax purposes. Business activities lasting only a few days could require registration as a permanent establishment at the local Department of Public Affairs (*Amt für öffentliche Ordnung*). For taxation purposes, however, in accordance with the double taxation agreements concluded between Germany and several other countries, business activities are classified as permanent establishments only after activities exceed a period of six months, or occasionally twelve months depending on the agreement concluded.

#### 11. Information Offices

Offices providing information only are neither required to be listed in the Commercial Register as a branch nor are they required to be registered as a permanent establishment with the local Department of Public Affairs (*Amt für öffentliche Ordnung*). Information Offices are rare due to the fact that all in-house business practices such as advertising, customer service, maintenance and repairs, sales negotiations, and technical advice are already regarded as commercial activities. Thus the establishment loses the character of a pure information office. Establishments that can be considered information offices are those, for example, that only stock information to be distributed upon request.

#### 12. Company Names

The name of a firm (= "Firma") can be constructed from the name of a person (information concerning the proprietor), from a specific subject (information concerning the business type of the company), or from a fictitious name. The individuality of the business can be preserved, but the company name must contain distinguishing characteristics. The name may also not include any false information that might lead to an incorrect understanding of the business operations. It is important and required that all firms, which are listed in the Commercial Register provide, on behalf of the firm, information as to the legal form of the business.

It is advisable to consult the local Chamber of Industry and Commerce as to the appropriateness of a proposed firm name and description.

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