



Morison KSi

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# Doing Business Guide Germany



## About This Guide

This guide has been produced by the Morison KSi German member firms for the benefit of their clients and associate offices worldwide who are interested in doing business in Germany.

Its main purpose is to provide a broad overview of the various issues that should be considered by organisations when considering setting-up business in Germany.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Germany or looking to Germany as an opportunity for expansion, should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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# Introduction

## Why Germany?

Germany is well known as an exporting nation. But it is also a top destination for capital imports. Around one-quarter of the country's gross domestic product is generated by German subsidiaries of foreign companies and this ratio is increasing.

The strongly established 'Made in Germany' brand is a synonym for the premium-quality products sold around the world. At the same time, it also characterises the unique investment environment that the country provides.

Superior technological know-how and excellent research institutions, high quality standards in production and a high level of industrial production, as well as an excellent infrastructure for business, all encourage a wide range of investments.

Germany is one of the most promising destinations for foreign investment thanks to a variety of factors, including its central location in Europe giving access to the markets of Central and

Eastern Europe, full employment and a highly educated workforce, economic and political stability, a reliable legal system and a modern financial system.

Germany is well established as a democratic and progressive place to live. The German population is currently estimated at 81.3 million, making it one of the largest consumer markets within the European Union (EU). An excellent standard of living attracts nearly 8 million foreigners to make their home in Germany. In contrast to other European countries, the population has risen over the past decade, partly due to this influx.

A large and growing number of citizens speak one or two foreign languages along with their native German. The most commonly spoken foreign languages are English, French, Spanish and Russian. Germany offers diverse, accessible and excellent educational opportunities. Foreigners will have no trouble being understood in English in almost all parts of the country.

Germany is a member of several supranational organisations: the EU; the European Economic Area (EEA), which in addition to the EU member states includes Iceland, Liechtenstein and Norway; the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD). As a founding member of the EU, Germany actively participates in all the activities of EU subsidiary institutions.

## The economy

Germany's economy is the largest in the EU and the fourth largest in the world. It is one of the few developed market economies to have emerged from the economic crisis largely unscathed.

Most German industry is dynamic and expanding. Almost all industrial sectors are represented within the broad-based German economy. As befits a country with a well-educated population and a well-trained workforce, the most exciting prospects are offered by industries at the forefront of technology and by the providers of sophisticated technical, commercial and financial services.

Traditionally, the German economy has been oriented towards manufacturing. This orientation also extends to the services sector, where many companies are developing and applying leading-edge technologies for industrial use. For decades, manufacturing output has exceeded the consumption requirements of the domestic economy; in effect, Germany is and remains a major exporting nation, and Germany's recovery from the economic crisis was driven by exports.

Germany's social market economy combines the spirit of free enterprise with controls and other administrative and legal measures to ensure that large market participants do not seriously overrun other interests. Laws against unfair competition and for environmental protection illustrate the latter point.

The typical business in Germany is a small family-owned unit. Any outside shareholders are usually long-term employees or others who have longstanding personal relations with the founding family. Most large businesses are publicly held corporations with many shareholders. However, the original family owners often retain a significant minority holding and a few large businesses are still closely held by only a few individuals.



# Business Structures

## Overview

Any foreign investor may:

- directly supply goods or services to German customers (direct investment)
- establish a branch office of a foreign business organisation in Germany
- set up a separate business organisation in Germany

Criteria of choice should primarily be the intended type of business and its duration, the risks attached to it, the role of the entrepreneur within the organisation, and taxation.

The German law provides for three main types of domestic business organisation: corporation limited by shares, partnership and sole proprietorship.

The main forms of corporations limited by shares are:

- private limited corporation (*Gesellschaft mit beschränkter Haftung*; GmbH)
- public limited corporation or stock corporation (*Aktiengesellschaft*; AG)

As shown in Figure 1, the main forms of partnerships are:

- private limited partnership (*Kommanditgesellschaft*; KG)

- unlimited partnership under civil law (*Gesellschaft bürgerlichen Rechts*; GbR)
- general partnership under commercial law (*Offene Handelsgesellschaft*; OHG)

Entrepreneurs may freely choose the most suitable type of organisation for their business. However, prior to activities, any business organisation must give notification to the respective local administration and tax authorities. Further, special licences are required for certain activities, such as banking and insurance, real estate agencies, security, and gambling, as well as many crafts, and polluting activities.

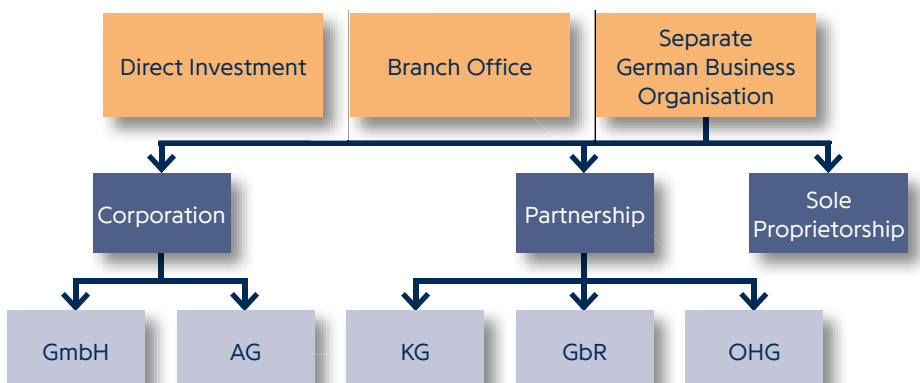
Moreover, foreign legal forms, such as the English limited company (Ltd) or the English limited liability partnership (LLP), are permitted in Germany. The European Court has ruled that companies incorporated in any EU member state may transfer their domicile to another member state.

## Corporations limited by shares

### Private limited corporation (GmbH)

Many small and medium-sized enterprises (SMEs) choose to organise as a private limited corporation (GmbH), which offers considerable flexibility, combined with the possibility for shareholders to exert influence on the management of the GmbH.

Figure 1: Main types of business organisation in Germany



The GmbH must have at least one shareholder. Any shareholder may be an individual or a corporation, and may be either domestic or foreign. The liability of the shareholders for the debts of the GmbH is limited to their contributions, in total to the amount of the share capital.

The articles of association of a GmbH may, to a wide extent, be tailored to the individual requirements of the shareholders. They must contain at least the company name and the registered office of the corporation, the purpose of its business, the amount of the share capital and the number and amount of the shares subscribed by each shareholder. The articles of association and the deed of incorporation must be notarised by a German public notary.

The GmbH as a separate entity is legally established by its registration in the commercial register kept by the competent local court. However, during the period between the notarisation of the articles of association and the deed of incorporation and the registration in the commercial register, the 'GmbH in formation' is already considered an entity able to act with legal effect towards third parties.

The minimum share capital of the GmbH amounts to €25,000. The share capital must be fully subscribed. Contributions may be made in cash or in kind; contributions in kind may not consist of services. In case of cash contributions, the shareholders must pay an amount of at least one-quarter of the nominal value of each share subscribed and of a total minimum amount of €12,500, to be freely disposed of by the management of the GmbH, before filing the application for registration of the GmbH in the commercial register. Contributions in kind must be made in total before such filing.

Shares of a GmbH may be freely transferred, but the shareholders may limit the transferability of the shares in the articles of association. The shares of a GmbH may not be listed at a stock exchange. Any contract by which shares are transferred must be notarised.

The shareholders appoint one or more managing director(s) of the GmbH to represent the GmbH towards third parties. The managing directors must be individuals. It is possible to appoint foreign individuals, even if they reside outside of Germany. The managing directors may be shareholders of the GmbH, but individuals who do not hold shares may also be appointed. The shareholders are at any time entitled to give explicit instructions to the managing directors on how to conduct specific areas of business or specific transactions. However, these instructions do not limit the managing directors' power of representation: in principle, any transaction with third parties concluded in disregard of shareholder instructions will be valid but the managing directors will be liable towards the GmbH for any damage arising out of the transaction. Further, the shareholders are free to remove managing directors from office at any time.

A supervisory board is only mandatory if the GmbH employs more than 500 persons. If it has fewer employees, the shareholders are free to install a supervisory board and to define its functions at any time.

Since 2008, a new variation of the GmbH exists: the *Unternehmergesellschaft (haftungsbeschränkt; UG)* may be incorporated with a minimum share capital of €1. During its existence, profits may not be fully distributed until the nominal share capital is increased to at least €25,000.

### Public limited corporation or stock corporation (AG)

The AG is a form of business organisation that is usually chosen for large businesses as shares of an AG may be freely transferred and AGs can be listed at a stock exchange. Stock exchanges in Germany are located in Berlin, Dusseldorf, Frankfurt, Hamburg, Hanover, Munich and Stuttgart. As shareholders may also limit the transferability of the shares, this form of organisation can also be attractive to medium-sized family-owned companies, especially if the shareholders wish to establish an independent management of the corporation.

The AG must have at least one shareholder. Any (foreign) individual or (foreign) corporation may be a shareholder. The liability of the shareholders for the debts of the AG is limited to their contributions.

The articles of association of an AG must contain at least:

- the company name
- the registered office of the corporation
- the purpose of its business
- the amount of the share capital
- its split-up in terms of:
  - par-value shares (their par-value and their number)
  - no-par shares (their number)
  - common shares and preference shares (their class and the number of shares of each class)
- information on whether the shares are bearer shares or nominal shares
- the number of the members of the directing board or the dispositions that determine this number

Further, the German Stock Corporation Law contains many dispositions that cannot be amended by the articles of association of an AG. The articles of association must be notarised by a German public notary.

The AG as a separate entity is legally established by its registration in the commercial register kept by the competent local court. During the period between the notarisation of the articles of association and the deed of incorporation and the registration in the commercial register, the 'AG in formation' is already considered an entity able to act even with legal effect towards third parties.

The minimum share capital of the AG amounts to €50,000. The share capital must be fully subscribed. Contributions may be made in cash or in kind; contribution in kind cannot consist in services. In case of cash contributions, the shareholders must pay an amount of at least one-quarter of the nominal value of each share subscribed and of the total minimum amount of €12,500, to be freely disposed of by the management of the AG, before filing the application for registration of the AG in the commercial register. Contributions in kind must, in principle, have been made in total before such filing; only if the contribution in kind consists in the obligation to transfer goods to the AG, this transfer may be done within 5 years from the registration in the commercial register.

During the establishment of an AG, the founders appoint the first auditors of the AG as well as the members of the supervisory board of the AG. The supervisory board must have at least three members. The supervisory board appoints the chair and the members of the executive board of the AG. The members of the supervisory board,



the chair and the members of the executive board must be individuals. It is possible to appoint foreign individuals as well as to appoint individuals who are shareholders of the AG or individuals who are not shareholders. Nevertheless, no member of the supervisory board may act as chair or member of the executive board, and vice versa.

The chair of the executive board represents the AG towards third parties. Neither the shareholders nor the supervisory board of an AG are entitled to give explicit instructions to the chair or the executive board on how to conduct specific areas of business or transactions. Only the supervisory board may subject certain transactions of the chair, director or executive board to the supervisory board's prior approval. The chair or the members of the executive board are appointed for a fixed period of up to 5 years and may be removed from office only for a legitimate cause. Re-election is permissible.

## Partnerships

### Private limited partnership (KG)

Primarily for tax reasons, a lot of small and medium-sized businesses are not organised as a GmbH but as a GmbH & Co. KG which is a private limited partnership with a private limited corporation as the general partner.

Private limited partnerships have two classes of partners: at least one general partner, whose liability for the partnership's debts is unlimited; and one or more limited partners, whose liability for the debts of the partnership is limited to their contributions to the partnership. The general partner represents and manages the partnership, while limited partners generally only have rights of control.

For the purpose of establishing a private limited partnership,

at least two partners enter into a partnership agreement. The general partner(s) and the limited partner(s) as well may be individuals, partnerships or corporations, either domestic or foreign. No minimum share capital is legally required for the private limited partnership.

The general partner may be a private limited corporation (GmbH) resulting in a GmbH & Co. KG. The same (domestic or foreign) individual or corporation may be, at the same time, the sole shareholder of the GmbH and the sole limited partner. The GmbH & Co. KG has the advantage that the liability of the person(s) behind the partnership – the shareholder(s) of the GmbH and the limited partner(s) to the KG – for the partnership's debts is limited at last. Legally, such a partnership is treated like a corporation in many aspects.

The partnership agreement does not need to be notarised, except for special obligations contained in it such as the transfer of real estate. The KG must be registered in the commercial register.

### Unlimited partnership under civil law (GbR) / General partnership under commercial law (OHG)

The unlimited partnership under civil law is often used for the joint administration of assets, especially real estate.

A GbR is established by an agreement between at least two partners. These partners may be (domestic or foreign) individuals, partnerships or corporations. The liability of every partner for the debts of the partnership is unlimited. No minimum share capital is required.

A GbR cannot be registered by the commercial register as it is not a legal entity; it can, nevertheless, sue and be sued in its own name

*"If someone wishes to conduct business activities on their own without establishing a corporation, this individual can act as a sole proprietor."*

if it enters into legal relations. As the GbR has no separate legal personality, the members act on its behalf.

If a GbR runs a commercial business, it automatically becomes an OHG. The same rules apply as for the GbR, completed by some specific rules. For example, the OHG must be registered in the competent commercial register.

### Sole proprietorship

If someone wishes to conduct business activities on their own without establishing a corporation, this individual can act as a sole proprietor (*Einzelkaufmann*). As such, they are liable for all debts incurred as a sole proprietor.

The sole proprietorship must be registered in the commercial register kept by the competent local court.

### Branch offices, especially of foreign businesses

If a foreign business does not wish to incorporate a new subsidiary in Germany, it can still consider establishing a branch office. This branch office is a mere extension of the foreign business entity, not a separate legal entity. The branch office must be registered in the commercial register kept by the competent local court and any changes occurring at the foreign business also need to be registered.

# Labour and Personnel

## Workforce in Germany and immigration

Out of a population of about 82 million, over 43 million people were economically active in January 2017. The German workforce is well trained and well educated, and is accustomed to high standards of efficiency and organisation. It is also used to high levels of protection and generous fringe benefits and remuneration.

The employment of foreigners in Germany is subject to a permit of residence for the means of employment, which comprises the employment authorisation. The conditions under which such a permit of residence is granted will depend on the particular home country:

- Citizens of EU countries, citizens of the EEA and Swiss citizens generally do not need either a permit of residence or an employment authorisation.
- Citizens of other countries generally need a permit of residence for the means of employment before entering Germany, which in most cases requires acceptance by the German Federal Employment Agency (*Bundesagentur für Arbeit*). This acceptance will depend on the employee's qualifications and intended field of employment. Special regulations apply to physicians, to mechanical and electrical engineers and to other highly qualified professionals from non-EU countries to encourage their coming to Germany. Citizens of Australia, Canada, Israel, Japan, Korea, New Zealand and the USA can apply for a permit of residence after their arrival in Germany.

Further information, including advice on the recognition of

qualifications, is available on the website of the International Placement Services (ZAV) of the Federal Employment Agency ([www3.arbeitsagentur.de](http://www3.arbeitsagentur.de)), the website of the Federal Employment Agency ([www.arbeitsagentur.de](http://www.arbeitsagentur.de)) and the website of the European jobs network (<http://ec.europa.eu/eures>).

## Statutory working conditions

Many working conditions can be negotiated directly between the employer and the employee, or are laid down in collective agreements between the employer and the work council or between the employer or an employers' association and a labour union. Nevertheless, some working conditions are mandatory in the way that individual negotiations can only be amended in favour of the employee.

### Working hours

In principle, the maximum working time is 8 hours per day, Sunday excluded. Individual and collective agreements on part-time employment and/or flexible working hours are quite common.

### Minimum wages

With effect from 1 January 2015, a legal minimum wage has been introduced to German law. In 2017, this gross general minimum wage amounts to €8.84 per hour. However, for some industries, collectively agreed minimum wages apply, leading to binding gross minimum wages of up to €16.13 per hour.

### Sick leave

In the case of illness, the employer pays the full salary for a period of 6 weeks, provided the employee was employed at least 4 weeks prior to the illness.

### Maternity leave and parental leave

Female employees are entitled to a maternity leave of 6 weeks before and 8 weeks after childbirth. During this period, the employer pays the salary less the amount of maternity allowance paid by health insurance.

Until a child's eighth birthday, both parents are entitled to parental leave of up to 36 months. If the employee makes use of this possibility, s/he cannot claim wages for this time, but is granted a parental allowance for up to 14 months.

### Annual leave

Every employee is entitled to a minimum of 24 days of annual leave after 6 months of employment.

### Employee participation

In enterprises with at least five employees, the employees are entitled to elect a works council that represents their interests. A works council must be informed and heard in various matters, especially prior to dismissals. Further, approval of the works council is necessary in some matters, like issues of safety at work.

The employer and the works council can enter into collective agreements that are binding on all employees of the enterprise.

### Dismissal

The statutory period of notice will depend on both the party terminating the contract and the duration of employment. Generally, the period of notice is 4 weeks to the 15th or to the end of the month. After 2 years of employment, longer periods of termination – up to 7 months, after 20 years of employment – apply if it is the employer who terminates the contract.

In enterprises with more than five employees, any dismissal of an employee who has been employed for a longer period than 6 months is valid only if there is a cause; this cause may be operational or based on the person or the behaviour of the employee.

If a works council exists in the enterprise, any dismissal is invalid if the works council has not been properly informed.

In some situations, an employee may not be dismissed at all, or only subject to further conditions. This applies to disabled employees, members of the works council, employees on parental leave, pregnant employees and young mothers.

### Social security

In general, every employee is affiliated to the German social security system, which includes insurance for health, long-term care, pensions, unemployment, accidents and maternity leave.

For most branches of the social security system, the contributions to be paid will depend on the individual salary and, in 2017, amount to the following:

- **health insurance:** 14% or 14.6% of the gross salary, limited to €52,200 per year, plus a supplemental premium
- **long-term care insurance:** 2.55% or 2.8% of the gross salary, limited to €52,200 per year
- **pension insurance:** 18.7% of the gross salary, limited to €76,200 (western part of Germany) or to €68,400 (eastern part of Germany) per year
- **unemployment insurance:** 3.0% of the gross salary, limited to €76,200 (western part of Germany) or to €68,400 (eastern part of Germany) per year

The employer pays 50% of these contributions, except for the health insurance where the employer's contribution is a little smaller. The remainder must be withheld from the employee's salary, otherwise the employer may be held liable.

An employee whose annual gross salary exceeds €57,600 may choose to be affiliated to the statutory health insurance or to contract a private policy. The choice makes a difference as to the amount of contributions and the services insured.

Besides the statutory pension insurance, many employers offer corporate pension schemes, and many employees choose to contribute to additional retirement provisions such as the government-funded *Riester-Rente* (Riester pension).

As for accident and maternity leave insurances, the employer pays 100% of the contributions, with the amount depending, among other things, on the risk level of the enterprise: in general, contributions amount to 1–2% of the aggregate gross wages paid by the enterprise.

Self-employed persons must contract private insurances as they are not part of the statutory social security system. In particular, they are not entitled to be a member of a statutory health or pension insurance, but must make their own private provisions.

# International Mobility

Every foreigner who wishes to pursue any kind of economic activity in the Federal Republic of Germany requires a relevant permit. This does not apply to citizens of the EU, EEA or Switzerland. Furthermore, it should be noted that not every residence permit gives its holder the right to pursue an economic activity.

The German right of residence has no concept of a separate work permit. A residence title – which may, under certain conditions, permit the pursuit of an economic activity – is granted according to a standard form by a foreigner’s authority if the foreigner concerned is already in Germany or, by a German diplomatic mission, if the foreigner is applying from abroad. However, many residence titles require a formal internal approval of the Federal Employment Agency. The kind of approval required from the Agency, if any, depends largely on the specific employment a foreigner intends to enter. Should an approval be necessary, the Agency usually checks whether this particular case of employing a foreigner might have a negative impact on the German labour market and if there

are persons who are entitled to preferential access to it.

In principle, the following general preconditions for the granting of any type of residence title apply:

- The appropriate application has been submitted to the competent authority.
- The foreigner’s subsistence is secure.
- The foreigner’s identity is established and so is their nationality.
- The passport obligation is met.
- There is no reason for expelling the foreigner.
- The interests of the Federal Republic of Germany are not compromised or jeopardised.

Table 1 summarises the various residence titles that allow the pursuit of an economic activity, as well as their respective special preconditions for granting. The overview focuses exclusively on the preconditions for granting of the right of residence with regard to economic activity; other residence purposes are not dealt with.

Table 1: Overview of residence titles allowing the pursuit of an economic activity and their special preconditions

Residence title	Special preconditions for granting	Kind of economic activity permitted	Validity	Fees / time of processing
<b>Temporary residence permit</b>	The foreigner entered the country with a valid visa and has a concrete job offer, and the Federal Employment Agency has granted approval of the permit – except for exceptional and justified cases when this is unnecessary.	Employed as well as self-employed economic activity may be permitted. The permission is often only valid for work for a certain employer or in a certain area of the Federal Republic of Germany. The temporary residence permit may also be issued for educational purposes.	Time limit takes due account of the intended purpose of residence. The temporary residence permit, which entitles its holder to pursue an economic activity, is limited to a maximum of 3 years. The time limit may be extended as well as shortened.	Fee: up to €110  Processing time: usually 4–6 weeks
<b>Permanent settlement permit</b>	The foreigner entered the country with a necessary visa, has had a temporary residence permit for 5 years or is a highly qualified foreign worker who is meant to fill a concrete position, or has held the EU Blue Card for 33 months and has paid contributions to the statutory or comparable pension scheme. The time limit is reduced to 21 months if the foreigner concerned has a sufficient command of the German language.	Every kind of economic activity in Germany	Unlimited in time	Fee: up to €250  Processing time: usually 4–6 weeks

Continued



<b>EU long-term residence permit</b>	<p>The foreigner entered Germany with a necessary visa and has had a residence title for 5 years; his/her subsistence and the subsistence of his/her dependants is ensured by a fixed and regular income; can prove his/her membership in the statutory or a private health insurance with an unlimited term, or one that is renewed automatically and offers a comparable insurance cover; can prove his/her contributions to the statutory or a private pension scheme with comparable benefits; has sufficient command of the German language and basic knowledge of the German legal and social system and the way of life; has not been found guilty of any criminal acts in the last 3 years; and has a certificate of registration, or proof of a registered place of residence.</p>	<p>Every kind of economic activity; also makes it easier to obtain a residence title in another EU member state</p>	<p>Unlimited in time</p>	<p>Fee: €135</p> <p>Processing time: usually 4–6 weeks</p>
<b>EU Blue Card</b>	<p>The foreigner holds a German or a foreign higher education qualification that is recognised or otherwise comparable to a German higher education qualification or if s/he has a comparable qualification demonstrated by ≥ 5 years of professional experience and has a concrete job offer in line with his or her qualifications and offering him or her an annual income of two-thirds of the contribution assessment limit for statutory pension scheme. The contribution assessment limit changes every year. For those foreigners representing professions with a shortage of qualified workers, a salary limit of ≤ 52% of the contribution assessment limit applies. At present, such professions with a shortage of qualified workers include, among others, mathematics, IT, natural sciences, technology and medical professions.</p> <p>In addition, the Federal Employment Agency must usually give its approval.</p>	<p>Issued only in connection with a concrete employment relationship</p>	<p>Maximum period of 4 years from the date of initial issue if the duration of the employment contract is limited to 4 years, or unlimited. If the duration of the employment contract is &lt; 4 years, the EU Blue Card is limited to the period covering the employment contract + 3 months.</p>	<p>Fee: up to €110</p> <p>Processing time: usually 6–10 weeks</p>
<b>Schengen visa</b>	<p>The foreigner can provide evidence for the purpose of their trip (e.g. the original of an invitation letter); can credibly prove their intention to return (e.g. return trip booked, or an existing employment relationship in the home country); there is no record of the person in the Schengen information system (SIS); the person presents no danger to public order, national security or international relationships; and no EU member state has issued an alert for them with the purpose of refusing entry.</p>	<p>Usually, no economic activity is permitted. However, there are some exceptions with regard to the activity as well as the duration. Examples include:</p> <p>company employees in managerial positions and those travelling on business for ≤ 90 days within a period of 180 days</p> <p>internship for educational purposes and persons acting within contracts for work and services/materials for up to 90 days within a 12-month period</p>	<p>A brief stay in Germany, depending on the purpose of stay</p>	<p>Fee: €60, but there are reductions/exemptions for certain persons and nationals of certain countries</p> <p>Processing time: varies, but usually 2–10 working days</p>
<b>National visa</b>	<p>The foreigner presents evidence of an intended economic activity – e.g. an employment contract that includes a job description, or a preliminary contract or concrete job offer. The diplomatic mission, where the visa application is to be submitted, ensures the necessary approval of the foreigner's authorities. The approval of the Federal Employment Agency is likewise necessary (apart from exceptional cases).</p>	<p>Self-employed or employed economic activity</p> <p>Once issued, the national visa allows its holder to take up an economic activity described in the visa immediately after entry into the country.</p>	<p>Usually valid for 3–6 months, although this can vary depending on the purpose of stay</p> <p>This visa may under certain conditions be transformed into a residence title with a longer validity period during a foreigner's stay in Germany.</p>	<p>Fee: €60, but there are reductions/exemptions for certain persons and nationals of certain countries</p> <p>Processing time: depends strongly on the competent diplomatic mission and particularities of the specific case. The processing time can vary between a few weeks and several months.</p>
<b>Van der Elst visa</b>	<p>The foreigner must show evidence of the intended economic activity as well as evidence of the services his/her employer intends to provide in Germany. In addition, the applicant is to provide evidence of a regular employment in another EU member state as well as evidence of a legal residence title in the country of employment.</p>	<p>Issued to non-EU citizens employed by companies based in EU or EEA member states, who have been posted to Germany to provide cross-border services</p>	<p>Valid for a limited period, depending on the time it will take to provide the service in question; it is possible to extend this kind of visa</p>	<p>Fee: €60</p> <p>Processing time: depends on the competent diplomatic mission. Sometimes, a same-day issue is possible.</p>

# Taxation System

This section gives an overview of the main taxation issues for corporations, partnerships and individuals. Furthermore, it contains specific tax implications for cross-border transactions.

## Tax for corporations

### Corporate income tax

In Germany, one must distinguish between resident and non-resident taxpayers. Corporates that have their domicile or actual place of management in Germany have full income tax liability there. The fact that the actual place of management may result in full tax liability should be kept in mind, particularly if the managing director of an overseas corporation resides or makes frequent business trips to Germany, staying several days at a time, and makes day-to-day business decisions there.

An overseas entity with a permanent establishment in Germany, on the other hand, has limited tax liability in this country and pays tax on the income generated in Germany.

In both cases, the tax rate is 15% plus a 'solidarity surcharge' of 5.5%, amounting to 15.825%. Corporations make quarterly prepayments calculated on the basis of the preceding year's income. The standard fiscal year is the calendar year. In general, tax returns are to be filed by 31 May of the following year. This deadline is automatically extended to 31 December if tax returns are prepared by a tax advisor. However, tax authorities are allowed to demand an earlier filing. Tax returns are filed electronically. Tax authorities can carry out tax audits with regard to all relevant taxes. Many companies are audited regularly at 3-yearly intervals.

Losses can basically be carried forward without maturity. However,

a harmful acquisition of shares may trigger a pro rata or full decrease in loss.

### Trade tax

In addition, corporations pay trade tax on business operations in Germany, regardless of the type of operation. The actual trade tax rate depends on the municipality where the corporation is based. The trade earning is multiplied by a rate of 3.5%, which is fixed by the federal government and valid across Germany. The outcome is then multiplied by the individual rate set by the relevant municipality, which generally ranges between 200% and 500%. This results in an effective trade tax rate of between 7% and 17.5%.

Trade tax prepayments, based on the preceding year's income, are made quarterly.

### Value added tax

The German value added tax (VAT) system is largely based on EU directives. Since EU law generally ranks higher than domestic law, the main principles are consistent with regulations in the other EU countries.

VAT is one of the indirect taxes, since the taxpayer does not bear the tax burden in the end. In general, VAT is a tax on consumption and is levied on every entrepreneur who supplies goods and/or renders services. Within the business-to-business (B2B) area, VAT is neutral in most cases because it can be deducted by the receiving company (input tax) as long as it is not connected with VAT-free output transactions. In order to deduct VAT from invoices paid, it is vital to make sure that the invoices comply with the requirements of the German VAT law. For goods and service supplied to the end-consumer, VAT is a definite tax burden.

In general, the VAT rate is currently 19%. For several goods and services, the rate is reduced to 7%. Furthermore, a full tax relief is granted for specific goods and services. Exemptions are made for small businesses that do not exceed a certain turnover ceiling. However, they are not allowed to deduct the input tax they have been billed.

Each local tax authority issues a tax number, valid for all tax purposes, to every German taxpayer. If an entrepreneur is involved in the intra-EU supply of goods or services an additional VAT identification number must be applied for with the Federal Central Tax Office.

Normally, businesses must file advance VAT returns on a monthly basis. In some cases, the filing period can be extended to quarterly returns. Furthermore, an annual tax return is to be prepared and sent to the tax authorities electronically.

### Flat rate withholding tax

The general tax rate for capital gains is 25% plus a solidarity surcharge of 5.5%, which totals 26.375%. This tax is retained by the paying company or bank. If the recipient is a domestic corporation, such dividends are tax free if the participation amounts to at least 10%. In return, 5% of the tax-free amount must be added as non-deductible business expenses.

Gains and losses from selling shares are also tax free for German corporations without any minimum participation. An amount of 5% as non-deductible business expenses must also be added.

Foreign shareholders might benefit from the parent–subsidiary directive.

### Tax for partnerships

#### No income tax at the partnership level

In Germany, partnerships are treated as transparent for income tax purposes. This means that taxable income is calculated at the partnership level, but the tax is paid by the partners in proportion to their share in the partnership. For this purpose, the partnership must file an annual separate and uniform profit statement, which is the basis for taxation of each member of the partnership. Partnerships can also be subject to tax audits regarding the calculation of the taxable income as well as trade tax and VAT.

The actual tax burden depends on the legal form of a partner: a corporation must pay a flat corporate income tax of 15% plus solidarity surcharge of 5.5% (15.825% in total). An individual is taxed with the progressive personal tax rate. A foreign partner is taxable in Germany based on their *pro rata* income.

#### Trade tax and VAT

Unlike income tax, a partnership is liable to trade tax if its business operations are seen as trading activities. The calculation method and tax rates are the same as those for corporations. With regard to business tax, there is a tax allowance valid exclusively for partnerships, which currently amounts to €24,500.

Furthermore, a partnership itself pays VAT if it carries out business activities. The procedures and tax rates are the same as for corporations.

### Tax for individuals

#### Income tax

Every individual who is a permanent resident or has their habitual abode in Germany has full tax liability. This means that the taxpayer's income generated anywhere in the world is taxed in Germany; their citizenship is irrelevant according to German regulations.

In Germany, there are seven types of income, divided into two groups:

- **profit income:** from agriculture and forestry, trade or business, and self-employment
- **surplus income:** from employment, capital, property letting and miscellaneous other sources (e.g. pensions)

A person without a permanent residence or place of habitual abode in Germany has limited tax liability. Generally, this means that only the income generated from a non-resident's activity in Germany is also taxed in Germany. This includes, for example, income from employment or from renting and leasing.

The tax rates are the same for those with limited as well as unlimited tax liability. The general progressive tax rate ranges from 14% to 45% and is applicable to six of the seven income types. Capital income is taxed with a flat tax rate of 25%. Furthermore, a solidarity surcharge of 5.5% is payable on progressive as well as flat income tax. If a person is a church member, an additional church tax of 8% and 9%, respectively, is to be paid.

Tax is withheld on income from employment and most capital income, and has a compensatory effect in some cases. Other income is generally taxed within the annual income tax return. Tax authorities can determine quarterly pre-payments. The relevant tax year is the calendar year. Tax returns are to be filed by 31 May or 31 December of the following year if prepared by a tax advisor. Persons with unlimited tax liability in Germany can benefit from various tax allowances within the annual income tax return.

Tax authorities can also carry out tax audits for individuals with regard to all relevant taxes.

### Trade tax

Individuals pay trade tax on income from trade or business. Therefore, the distinction between business income and self-employed income is relevant for the taxpayer. The calculation method and the amount are the same as for corporations and partnerships. The amount of trade tax to be paid can be (at least partially) set off against income tax within the annual income tax return.

### VAT

Individuals pay VAT if they engage in any kind of commercial activity. Regulations for VAT are the same regardless of the legal form. Please see the relevant information for corporations.

### Gift and inheritance tax

In Germany, taxes are levied on inheritance and gifts. Tax liability arises if either the testator or donor, or the heir or donee's tax liability, is unlimited in Germany. Furthermore, an inheritance or gift means limited taxability if property located in Germany is involved.

The actual tax burden depends on the relationship between testator or donor and the heir or donee and the relevant amount. In case of unlimited tax liability, the tax-free amount is at least €20,000 and at the most €500,000. The actual approach with regard to the tax-free amount in case of limited taxability is currently being discussed at the administrative level and must be checked on a case-by-case basis. The tax rate, which depends on the value of the properties, ranges from 7% to 50%.

### Taxation of employees

Employees working for a domestic employer or a foreign temporary employment agency pay taxes on a monthly basis by means of wage tax

withholdings. If an employee does not receive any further income, s/he does not need to file an income tax return.

For employees, a lump sum allowance of €1,000 is deducted automatically. If the employee's actual expenses are higher, they must file an income tax return and provide invoices to prove the expenses.

### Special issues for expatriates

There are no special regulations for expatriates; general rules for employees are applicable. The main issues to consider are obtaining a permanent establishment by the employee; the employer's payroll obligations; and the (partial) taxation of later payments, like bonuses or stock options, as well as the question of taxation of foreign capital income and insurances if any. Further topics can occur depending on the overall situation and income of the expatriate.

### Exit tax

If an individual is considering giving up their permanent or partial residency in Germany, they may have to pay exit tax according to German regulations – especially if they have had a significant participation in a domestic or foreign corporation of  $\geq 1\%$  in the last 5 years. The difference between the value of this participation to date and the historical buying price is taxed with the personal income tax rate. If the taxpayer is a citizen of an EU/EEA country and has unlimited tax liability in any EU/EWR country, the tax can be deferred.

### Social security contributions

The German social security system is not based on taxes. Nevertheless, every resident is obliged to have healthcare insurance. Beside this,

only employees are obliged to contribute into the state pension scheme and the unemployment insurance system. Employees and employers share the monthly contributions.

### Tax considerations for cross-border transactions

#### Double tax treaties

Germany has an extensive double tax treaty (DTT) network. Recently, the purposes of the bilateral agreements were extended to ensure a one-time taxation.

If a taxpayer is taxable in two countries, this double taxation conflict can be resolved by the relevant DTT. In many cases, only one country has the taxation right. If the source state can tax the income, then the country of residence avoids the double taxation by means of tax exemption (often with a progression clause) or by granting a foreign tax credit. In some cases, both countries are allowed to tax and the country of residence deducts the foreign taxes paid based on DTT as well as domestic rules.

Within domestic law, Germany has established some instruments against treaty abuse and double non-taxation as well as aiming to prevent treaty shopping.

#### Transfer pricing

All cross-border business relations between affiliated companies must comply with the arm's length principle – currently a crucial topic worldwide (e.g. in the OECD's ongoing base erosion and profit shifting strategies). German tax authorities are likewise keen to extensively check all transactions between affiliated companies to ensure that lower tax rates in other countries are not exploited.

There are several acknowledged methods for determining adequate prices for goods and service supplies between affiliated companies. In Germany, companies with a certain amount of intra-company goods and service supplies are obliged to provide transfer price documentation. Currently, large companies have to deal with the country-by-country reporting issues.

#### Foreign Tax Act

In Germany, it is important to avoid any profit shifting to a foreign country. Therefore, several regulations of the Foreign Tax Act should be checked for companies and individuals who reside in Germany and have connections to a foreign country. These rules can lead to additional taxation in Germany. One of the prerequisites is that the other country is a low-tax country. It is, therefore, vital to check and plan ahead in order to avoid this additional tax burden.

*"In Germany, companies with a certain amount of intra-company goods and service supplies are obliged to provide transfer price documentation."*



# Banking and Finance

This chapter focuses on export finance in Germany, which is an interesting issue in an international context.

On the one hand, it seems to be universal knowledge that Germany's economy is very export oriented. On the other hand, few people are aware that Germany's financial system offers strong support for companies that provide goods or services to customers abroad. Here, we explore some of the opportunities that this offers.

## Key players

Banks that finance German export can be divided into three groups. The first comprises German top-tier banks: Deutsche Bank, Commerzbank, Hypovereinsbank (member of Unicredit), and other global players acting through their respective German or EU subsidiary

(e.g. Citi, HSBC, Société Générale). These banks tend to specialise in large and complex transactions (for long-term financing – the minimum value is typically €20 million) and companies with a significant export volume. They accept smaller tickets only if they happen to fit into their strategy.

The second segment consists of state-owned banks: KfW, KfW-Ipex and the so-called *Landesbanken* (e.g. HSH Nordbank, Bayerische Landesbank, LBBW). KfW is a financial institution through which the German government directly provides support, while KfW-Ipex is legally a private bank – but a 100% subsidiary of KfW. Every *Landesbank* is owned by one or more federal states (*Bundesländer*) and mainly provides support to exporters located in the bank's region.

State-owned banks sometimes tend to have time-consuming internal procedures, but are ready to accept higher risks than their competitors in the top tier. They also provide loans for smaller transactions (from below €5 million to €20 million), which are typically less attractive for the top-tier banks. However, for the support of risky or smaller deals the state-owned banks need justifications that are acceptable to their shareholders and the taxpayer. Such a justification could be that the exporter located in the federal state of the respective *Landesbank* is struggling, or that the project is linked to an industry for which the bank has a special programme (esp. renewable energy projects). The state-owned banks are also active in large transactions; KfW-Ipex in particular has a very impressive track record in this segment.

The third group contains smaller banks that are either municipality owned (*Sparkassen*) or cooperative banks (esp. the *Volksbanken* and *Raiffeisenbanken*). These strictly

stick to the needs of their customers, which are SMEs. This segment may also demonstrate more risk appetite than the top-tier group – especially if the exporter is a long-term client of the bank. Smaller tickets are also welcomed.

## ECA finance (Hermes cover)

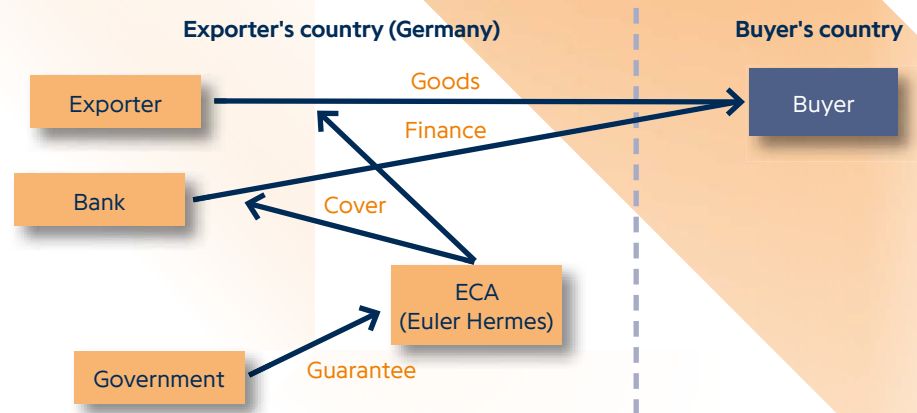
One of the most important players in the German export finance community is not a bank, but the German government acting through its export credit agency (ECA), the company Euler Hermes ([www.eulerhermes.com](http://www.eulerhermes.com)).

Every developed country has its own ECA. For example, the French government works with Coface, the Italians with SACE, and so on. These ECAs are needed to insure credit risks where private credit insurers are not active – that is, where the transaction:

- is more than €20 million
- has a credit period > 2 years
- involves a buyer from a non-OECD country (e.g. Russia, China, Saudi-Arabia, Brazil)

The principle is always the same (see Figure 2): the ECA covers its local exporters and their financing banks against losses resulting from political or economic risks in the buyer's country. As the government accepts the lion's share of the risks (usually 85–95% of the loan amount is covered), the banks can offer the same credit terms and conditions as if the transaction involved no greater risk (resulting from the value, the length of the credit period or the buyer's country of origin). Thus, the buyer can obtain financing with tenures and at interest rates that were otherwise unthinkable – certainly in emerging markets, the main target of ECA finance. Even large and long-term projects in developed countries are mostly,

Figure 2: Financial interactions of German government's export credit agency (ECA)



at least in part, financed with the backing of the exporter's ECA.

The German ECA is accepted as one of the best among its peers. It benefits from Germany's strong credit rating and its professional credit assessment. Although in some cases, the approach is stricter than in other ECAs; nevertheless, multinational companies and banks tend to finance transactions from Germany because they appreciate the reliability of Euler Hermes and the government. Also, the German ECA provides a cover product for trade receivables that is unique in Europe.

### Exports to Russia and Iran

The full strength of the German export finance industry is demonstrated by its financing of exports to Russia and Iran. Both markets have been extremely difficult in recent years as they are subject to US and EU sanctions. Yet the Germans have always found viable solutions for exports to both countries that are fully compatible with the relevant sanctions.

In the case of Russia, German banks and the German ECA benefit from a regulation in the EU sanctions. They stipulate, *inter alia*, a rule that generally bans any kind of financing for the largest Russian state banks

(e.g. Sberbank, VTB) that are often included into import finance deals if the Western bank does not want to collaborate with the Russian buyer directly. However, this regulation provides an exception if a loan is granted to finance export with ECA backing. Of course, it also helps that many German banks of the abovementioned second and third groups have no US business and, as a result, have more flexibility regarding the – mostly stricter – US sanctions.

The same goes for Iran. Many European ECAs have announced that they are open for business with Iran. However, many banks are still afraid of the political risks originating in Iran – especially the 'snap-back' risk, i.e. the re-establishment of the sanctions regime that was in place until the implementation day of the Nuclear Deal with Iran on 16 January 2016. As a result, French exporters find it virtually impossible to finance any business with Iran, whereas German banks – especially from the abovementioned second and third groups – are actively developing their relations with Iranian banks. Thus, it is possible to execute payments from Germany to Iran and vice versa, use letters of credit and even provide short-term financing (up to 12 months) for German exports to Iran.

# Reporting Requirements

## Accounting

Financial statements must be prepared in accordance with the German Commercial Code (*Handelsgesetzbuch*; HGB). The HGB contains binding regulations for all businesses as well as supplementary regulations for incorporated companies, banks and insurance companies. The supplementary regulations also apply to limited partnerships.

If net income does not exceed €60,000 and sales do not exceed €600,000, the HGB exempts sole proprietors from the requirement of keeping books and preparing financial statements.

Incorporated companies and limited partnerships are required to file their annual financial statements with the Federal Gazette ([www.bundesanzeiger.de](http://www.bundesanzeiger.de)) within 12 months (listed companies: 4 months) as from the end of the financial year. Penalties are incurred for late filing. The annual financial statements must be submitted electronically and are available for review by the public on the Federal Gazette website.

For incorporated companies and limited partnerships, the HGB distinguishes between large, medium-sized, small and micro entities. The company's classification depends on whether two of the following three criteria shown in Table 2 are met for the current and previous years. Corporations listed on an organised market according to the German Securities Trading Act are always considered large companies.

All companies are required to prepare full financial statements consisting of a balance sheet, income statement and explanatory notes. Companies classified as either medium-sized or large must also prepare a management report. The scope of information to be filed with the Federal Gazette depends on the company's classification. As a general rule, smaller companies are permitted to file less information than larger companies.

In general, parent companies are also required to prepare and file consolidated financial statements,

including a group management report.

## Financial reporting framework

Listed companies in Germany are required to file their group financial statements in accordance with International Financial Reporting Standards (IFRS).

The statutory accounts of all other companies must be prepared in accordance with German generally accepted accounting principles (GAAP). For filing purposes, a company may also prepare additional IFRS financial statements. These voluntary IFRS accounts may only be used for filing purposes and do not replace the statutory financial statements prepared under German GAAP.

## Audits

The statutory financial statements, as well as the management report of medium-sized and large companies, must be verified by an external auditor. Small and micro companies are exempt from this obligation.

Regardless of their size, all listed companies are subject to a statutory audit. Along with the audit of individual statutory financial statements of certain parent companies, their group financial statements are subject to an audit if their preparation is required by law.

Table 2: Classification criteria for periods beginning on or after 1 January 2016

	Total assets (€)	Sales (€)	Number of employees
Micro company	≤ 0.35 m	≤ 0.7 m	≤ 10
Small company	≤ 6 m	≤ 12 m	≤ 50
Medium-sized company	≤ 20 m	≤ 40 m	≤ 250
Large company	> 20 m	> 40 m	> 250

# Grants and Incentives

To encourage foreign companies to set up operations in Germany, substantial subsidies and tax incentives are available.

Germany has three levels of government – federal, state and local – with corresponding subsidies available at each level. Subsidies may also exist for a given economic area or sector, and it is entirely possible that multiple incentives will come into play concurrently.

The most basic tax incentive consists in Germany's average income tax burden of 29.83%, which is internationally competitive. This overall tax burden also includes the Gewerbesteuer (trade tax), which is specific to Germany and is paid to cities and municipalities. As a result, the tax rate varies by region, such that the overall tax burden may even be lower depending on the location (in some cases as low as 22.83%).

For multinational corporations, the double taxation of income generated in Germany can be avoided thanks to the numerous German tax treaties negotiated with other countries.

Subsidies and tax incentives are available at every stage of a company's development, starting from its foundation.

## Subsidies

Germany offers a wide range of subsidies, which are generally paid out in the form of direct grants. Other types of subsidies include credits, guarantees, investment capital and mezzanine financing.

Subsidies are also granted for specific investment purposes, such as the founding of SMEs (*Mittelstand* companies), environmental protection, renewable energies, research and development, and

human resources. The specific details of these federal and state subsidies can be determined from the corresponding subsidy guidelines.

One key subsidy mechanism consists in investment grants in connection with the so-called joint tasks of the German states to improve the regional economic structure. These joint tasks are specifically mentioned in Germany's Basic Law (*Grundgesetz*). The corresponding grants are typically awarded in situations where new jobs are created or existing ones secured. The grants promote investments in specific economic sectors, regions or companies.

For certain entrepreneurial initiatives, the state-owned bank Kreditanstalt für Wiederaufbau (KfW) offers low-interest rate loans that also come with a grace period for principal repayments during the initial years. These loans are designed mainly to support founders of *Mittelstand* and start-up companies, grant investment loans to SMEs, and finance infrastructure and energy-saving technologies. This support takes the form of direct investments in companies and subordinated loans. These resources are generally made available through the company's traditional bank.

The German states themselves also have development banks that act like KfW to support companies in the respective regions.

In the research and development area, grants may be awarded directly by the respective German federal and state ministries, and corresponding loans may also be obtained from the KfW bank.

For bank loans, state guarantees may be issued by the German states under certain circumstances,

thereby minimising the interest rate burden.

Various EU subsidies, such as from the European Investment Bank (EIB), may be obtained through national agencies.

### Tax incentives

The effective tax rate can also be reduced through a variety of measures.

Companies are allowed to offset losses over several years, especially during the start-up phase. Losses that cannot be used in a single year may therefore be eligible to be carried back to the previous year or forward to subsequent years, within certain limits.

Interest expense on bank loans is also tax deductible. This deduction is limited by the 'interest deduction ceiling', which is currently a matter of some constitutional controversy in Germany but has generated considerable interest abroad.

In general, licensing fees can also be deducted from the taxable base.

Asset purchase costs can be depreciated for tax purposes over the expected useful lives of the corresponding assets.

*"Interest expense on bank loans is also tax deductible. This deduction is limited by the 'interest deduction ceiling', which is currently a matter of some constitutional controversy in Germany but has generated considerable interest abroad."*

Special depreciation provisions to reduce taxable income also exist to support SMEs. These provisions support the purchase of movable assets (e.g. machinery) recognised as non-current assets.

Separate but affiliated companies may form tax groups to offset gains and losses within the group. Under German law, such a tax group must have a profit transfer agreement between the affiliated companies. The corresponding loss transfer obligation is thus a legal consequence of the agreement.



## Agencies Providing Assistance

If a foreign company is considering doing business in Germany, various governmental and quasi-governmental agencies – along with private-sector organisations – offer support.

Before the start of business operations, companies must usually obtain various authorisations and permits from governmental agencies, and in some circumstances the company must be registered in Germany. Numerous agencies provide information on such local requirements.

A commercial activity must be notified to the appropriate trade office (*Gewerbeamt*). Special permits are required in some sectors (e.g. security services, gaming, construction, insurance brokerage, financial investment brokerage, trades).

For commercial enterprises, the domestic subsidiary of a foreign company must be registered in the German Commercial Register. This still applies if a foreign company moves its registered office to Germany – for example, in accordance with simplified EU rules.

As regards the professional organisations, a distinction has traditionally been made in Germany between industry on the one hand (Chamber of Commerce and Industry) and trades on the other (Chamber of Trades). These organisations are self-governing bodies made up of members from the corresponding economic sectors and are, therefore, not direct governmental agencies. They exercise some governmental functions, but are also responsible for advising companies before start-up and during business operations.

Germany also has some general interest and industry-specific company associations established under private law that may provide information and, in some cases, legally represent companies (e.g. employer associations for industry and for local trades in the field of labour law, mainly for employee legal disputes).

### Governmental agencies

Under Germany's federal structure, the country has three levels of government: central (Germany), state (e.g. North Rhine Westphalia), and municipal (e.g. Herford and Herford district), with contact points at each level. The federal and state governments, for example, have ministries with the same or similar functional responsibilities (e.g. Finance, Labour and Social Services, Economy). Specialist authorities subsidiary to these ministries have also been established to handle specific cases, such as the Federal Central Tax Office (*Bundeszentralamt für Steuern*) or the Trade Supervisory Office (*Gewerbeaufsichtsamt*). Economic development agencies also exist at the municipal level, such as agencies that help market participants find suitable land.

### Chambers

In Germany, commercial enterprises are organised through chambers, which provide considerable support to companies. Membership of these chambers is required by law.

The respective memberships of the Chamber of Commerce and Industry and the Chamber of Trades consist in companies in industry and in the trades (e.g. services).

The Association of German Chambers of Commerce and Industry (*Deutsche Industrie- und Handelskammertag*; DIHK) also operates German Chambers of Commerce Abroad in most foreign countries, thereby making it possible for foreign companies to make initial inquiries and obtain information in their home countries.

In the trades area, local Chambers of Trades have been established and trades companies are required to join.

### Business associations

Many companies have joined together to form business associations that can represent and implement their common interests, notably in matters before the government. These associations have been established for the respective business sectors – such as the *Handelsverband Deutschland* (HDE) for the retail sector and the *Bundesverband der deutschen Industrie* (BDI) for industrial companies – as well as more generally for specific functions (e.g. employers' association for labour law issues and representation in labour courts). In the trade area, companies are organised through guilds.



## The Next Step

To discuss your needs, please contact:

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