

Glossary of important terminology relating to setting up companies

Handelsregister = Commercial register

A company must be entered in the commercial register before it is allowed to commence business operations in Germany. The commercial register contains central information about the company, the so-called "basic facts", such as capital, name, business purpose, owners, etc., and any amendments to such information. The commercial register is managed by the district courts. The location of the physical registered office of the new company determines which relevant district court is responsible. Specific regulations pursuant to the Stock Corporation Act (*Aktiengesetz*) and Limited Liability Company Act (*GmbH-Gesetz*) apply to incorporated companies. For example, the registration of a company with limited liability must include the object of the company, the amount of registered capital, the date on which the articles of incorporation were agreed and the names of the managing directors, in addition to the name and registered office of the company. In addition, any powers of representation ("*Prokura*") that are conferred must be registered, as must the scope of authorization granted to the managing directors of a GmbH, respectively the members of an AG's management board.

Gebührenpflicht = Liability to pay fees

A fee is payable for entry in a commercial register. The court always publishes all entries in their entirety in the Federal Gazette (*Bundesanzeiger*). Anyone is entitled to look at the register; there is no need to prove special interest.

Zweigniederlassungen = Branch offices

Selbstständige Zweigniederlassung = Independent branch office

In addition to setting up autonomous companies, irrespective of their legal form, it is also possible to open branch offices. An independent branch office, which is, by the way, not governed by any law, is a company operating in a different location than the head office. It demonstrates a certain degree of independence, which generally takes the form of proprietary management, bookkeeping, accounting, and company assets. It has its own registered office and legal venue, but no proprietary legal identity.

Unselbstständige Zweigniederlassung = Dependent branch office

A distinction must be made between independent and dependent branch offices. The latter is, by nature, a non-autonomous sales office that is dependent in every respect on the head office where the central administration of the company is located. Dependent branch offices include subsidiaries, representative offices, dispatch warehouses or production facilities that are in a different location from the administrative headquarters of a company.

Entry in the commercial register

The distinction between independent and dependent branch offices determines whether the office has to be entered in the commercial register.

Only independent branch offices have to be registered. The distinction is also important in terms of whether a company facility exists in terms of taxation law, and is therefore liable for taxation. Independent branch offices can only be set up or managed by so-called fully qualified merchants (*Vollkaufleute*), i.e. by people with commercial qualifications that are generally proven by a corresponding certificate of training. The establishment of both a dependent and an independent branch office must be registered with the trade office at the location where the company has its registered office.

Joint Ventures

Setting up a joint venture is also a possible means of investing in Germany. German company law treats foreign partners exactly the same way as Germans. Domestic and foreign partners are shareholders in the joint venture the same as with other companies. There are no maximum investment quotas or licensing prerequisites. The entry in the commercial register, which gives the new company its legal identity, is performed on the basis of the notarized certificate of incorporation.

Legal forms for setting up companies

German company law distinguishes between:

- Single-person companies
- Incorporated companies (limited liability companies, joint stock corporations and partnerships limited by shares)
- Partnerships (general partnerships, limited partnerships, silent partnerships)

Einzelunternehmen = Single-person companies

The principle of freedom of trade applies in Germany. This means that there are no particular prerequisites, such as specialist knowledge, that need to be proven by the person engaged in a trade when pursuing the majority of independent professions. Certain commercial activities (e.g. bars/restaurants, passenger or freight transportation, realtors, craftsmen) require an official permit to protect the general public. Generally the commercial activity only needs to be registered with the local authority where the registered office of the company is located; in individual cases an official permit might be required. The activity must also be registered with the health insurance companies, the social insurance office (i.e. unemployment, accident and pension insurance), the trade association and the labor office (to obtain a company registration number).

Kapitalgesellschaften = Incorporated companies

Gesellschaft mit beschränkter Haftung (GmbH) = Limited liability company

Limited liability companies (GmbHs) are the most common types of company in Germany. They are legally governed by the Limited Liability Company Act (*GmbH-Gesetz*). A GmbH is an incorporated company with a proprietary legal identity. Its shareholders invest in shares in the registered share capital without being personally liable for the company's debts.

Setting up a GmbH

One person is already sufficient to set up a GmbH. Shareholders in a GmbH can also be both domestic and foreign legal entities. Foreign legal entities are recognized in Germany if their registered office is located in the relevant foreign country and such recognition is not *contra bonos mores* or does not contravene the purpose of German legislation.

Stammkapital = Registered share capital of a GmbH

The registered capital of a GmbH must be at least 25,000 euros. The minimum share in the registered capital is fixed at 250 euros. When registering the company, at least half of the registered share capital (12,500 euros) including contributions in kind must be paid in. In the case of single-person companies, the capital must be paid in immediately and in full. If capital is contributed in kind, a special non-cash contribution report must be presented, as is also the case in corporate law, in order to enable the registering court to assess the determined value (see "Articles of incorporation").

Gesellschaftsvertrag = Articles of incorporation

Notarized articles of incorporation must be drafted when setting up a GmbH. The GmbH acquires legal identity once it is entered in the commercial register of the relevant district court. The name of the GmbH must either relate to the object of the company or be formed from the names of the shareholders. It must always bear the suffix "mit beschränkter Haftung" (with limited liability).

Representation of a GmbH

A GmbH is represented by its managing director(s). This applies both to normal business operations and to representation in court. The managing directors can, but do not have to, be shareholders. Managing directors are appointed and dismissed by the shareholders' meeting. Given the simplicity of setting up and structuring a GmbH, it is often the most suitable legal form for foreign companies wishing to limit the risk of their operations to the capital they have invested in Germany.

Aktiengesellschaft (AG) = Joint stock corporation

Joint stock corporations are predestined for companies executing major business activities. AGs are especially suited as a legal basis for internationally linked corporations. At least five - natural or legal - entities are needed to set up an AG. The minimum capital stock is 50,000 euros, which is raised by issuing shares. The shares can be either bearer or registered shares.

Setting up an AG

First of all, court-certified or notarized articles of association are needed to set up an AG. As is also the case with a GmbH, the AG acquires legal identity once it is entered in the commercial register. The name of the AG is generally related to the object of the company. It must bear the suffix "Aktiengesellschaft" (AG). As with a GmbH, the company must be registered with the relevant register court of the district court at the registered office of the company. In the case of cash contributions, at least one-quarter of the nominal amount must be paid in; capital in kind must be contributed in full.

Representation of an AG

An AG is represented by its management board (consisting of one or more members). This applies both to normal business operations and to representation in court. Members of the management board are appointed and dismissed by the supervisory board. The supervisory board (at least three members) is, in turn, appointed and dismissed by the annual general meeting. Its main task is to supervise the management board's management of the company.

Personengesellschaften = Partnerships

Partnerships differ from incorporated companies in that one or more of their shareholders is or are liable to the full extent of his or their personal assets for the company's liabilities.

Offene Handelsgesellschaft (OHG) = General partnership

OHGs require at least two shareholders, which can also be legal entities (e.g. a GmbH). Each shareholder has unlimited liability. The name of the company must contain the surname of at least one of the shareholders, together with the company suffix (e.g. "& Co."). Given the full liability of the shareholders, however, an OHG is seldom a suitable legal form for the branch office of a foreign company.

Kommanditgesellschaft (KG) = Limited partnership

A KG differs from an OHG in that the general partner(s) (*Komplementär(e)*) have unlimited liability for the company's debts whereas the other shareholders as limited partners (*Kommanditist(en)*) are only liable for the amount of their investment. There is no legal stipulation in terms of the amount of liable investment.

Shareholders in a KG

Shareholders in a KG can also be both domestic and foreign legal entities. The name of a KG must include the surname of at least one of the personally liable shareholders and a suffix that implies the corporate interrelationship (e.g. KG). A KG whose sole personally liable shareholder is a legal entity must include a relevant suffix in its company name to document its resulting limited liability (e.g. "GmbH & Co."). Only the general partners (or just one of them) are entitled to manage and represent the company, not the limited partners.

For further information on legal terminology, refer to: the dictionary of legal terms at www.unternehmerinfo.de/Lexikon/a/Lexikon_A.htm (in German)

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