



# Formation and registration of companies in Germany (as of July 2018)

## 1. Overview

In Germany, foreign companies are generally entitled to pursue their own business interests. The regulation of the right of establishment only applies to all companies of EU/EEA member states. In addition, several agreements have been concluded between the Federal Republic of Germany and other countries, which are essential to the citizens of those countries seeking to do business in Germany.

Foreign investors can choose between varieties of legal forms when conducting business in Germany. The basic structure of all company forms is stipulated by law which provides for predictability and legal certainty. There are the same legal conditions for foreign and local entrepreneurs. Decisive criteria for the choice of legal form are generally the intended function of the shareholder, liability and terms of taxation.

There are two different types of companies in Germany – Partnerships and Corporations.

## 2. Partnerships

Partnerships are associations of natural or legal persons. In partnerships the individual partners are responsible for the liabilities of the company. Limitation of the individual liability is only possible to a limited extent.

A partnership could be established very easily and quick. For establishing a partnership, there are at least two partners required. Those partners are the only ones of whom the management of the company can be carried out. There's no minimum share capital. Depending on the type of partnership, it has to be incorporated in the commercial register. The application has to be signed by all partners and must be filed by a German notary in certified and electronic form.

### The most common partnerships are:

- „Gesellschaft bürgerlichen Rechts“ (GbR) – non trading partnership
- “Offene Handelsgesellschaft” (OHG) – general commercial partnership



- “Kommanditgesellschaft” (KG) – private limited partnership
- GmbH & Co KG – private limited partnership with a limited liability company as a general partner

## 2.1. GbR - non trading Partnership (Partnership under the civil code)

A GbR is a joining of two or more individuals or legal entities, whose **business operations do not require a commercially organized business establishment** – otherwise the company has to be formed as a general partnership or private limited partnership. The GbR is governed by the German Civil Code, §§ 705 ff. There is no need for the GbR to be entered in the commercial register.

The GbR is managed by the partners, they are unlimited (with operational and private assets) liable for the company’s debts. There is no minimum share capital. A GbR can be formed without any formal regulations.

## 2.2. OHG – general commercial Partnership

An OHG consist at least of two natural or legal entity partners. Those partners have joint, several and unlimited liabilities with operational and private assets for the company’s debts. The general partnership could be set up freely and without any certification by a lawyer. The OHG is governed by the German Code of Commerce (HGB). Generally all Partners are entitled to manage the company, special contractual agreements could be made by the memorandum of association.

The OHG has to be registered under its commercial name in the commercial register of the local court at the company’s seat of business. Thereby the application has to be witnessed and signed by an authorized notary.

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

## 2.3. KG - limited Partnership

The KG is in nearly all aspects comparable to the general commercial partnership, there’s only a difference in liability. The KG provides a certain limit to liability, it has at least one partner with unlimited liability (general partner / “Komplementär”) and at least one partner whose liability is



restricted to the investment he has contributed (limited partner / “Kommanditist”). The amount of liability could be chosen freely.

## 2.4. GmbH & Co. KG

The only general Partner is required to be a limited liability company. Indications to this must be made by an appropriate supplement to the company’s name, such as the commonly used “GmbH & Co”

## 3. Corporations

The main feature of a corporation is the contribution of capital by shareholders. A corporation is a legal entity, what means that the corporation itself - not the shareholder - is the holder of rights and obligations. The corporation concludes contracts, holds assets, and is liable for taxation. It is as well the subject of taxation - Corporations are liable to corporate tax, trade tax and the solidarity surcharge.

The shareholders liability is limited to their share.

All corporations are treated by the law as commercial businesses. All members of these business forms must be registered in the commercial register at the seat of the corporations business.

### The most common corporations are

- „Gesellschaft mit beschränkter Haftung“ (GmbH) - limited liability company
- „Unternehmergesellschaft (UG) haftungsbeschränkt“ –limited liability entrepreneurial company
- „Aktiengesellschaft“ (AG) – stock company

### 3.1. GmbH

The GmbH is a legal entity in its own right, the German “*GmbH-Gesetz*”. Due to liability reasons, the required capital of a GmbH must total a minimum of € 25.000,00. The original capital contribution of each partner must be at least € 1,00.



The contributions of partners are also allowed to be made in kind. In this situation, the items and their estimated values must be stated in the partnership contract. This has to be done in a special report concerning the companies' foundation on the basis of non-cash contributions.

The minimum payment to found a GmbH is € 25.000,00. Failure to pay the nominal capital amount will in no way reduce the liability of the individual. As individuals, partners are, to the company creditors, only liable with their original contribution.

A GmbH may also be founded by a single person 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 GmbH is judicially and non-judicially represented by its managing director, there has to be at least one director. There's no need for the director to reside in Germany. The director can also be partner of the company, but is not required to. 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).

### 3.2. UG

Since November 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.



### 3.3. AG

A stock company is a legal entity in its own right, the German “*Aktiengesetz*”. 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 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.

## 4. Branch Offices

Registered commercial businesses, also foreign, may establish branch offices. In contrast to a subsidiary, a branch office is in legal and administrative terms part of the head office company and is not a separate legal entity in its own right. The branch office carries out similar business activities to the head office company, the head office is liable for the assets of the branch.

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

### 4.1. Selbständige Zweigstelle (autonomous branch offices)

A “*selbständige Zweigstelle*” is characterized by an own possession, separate bookkeeping and certain freedom for the manager in doing business. Generally any registered foreign company can set up an autonomous branch office. The branch office has to be registered in the local German commercial register. The regulation ships to the customers are generally subject to the German law. However the foreign head office company is liable for the branch offices business conclusions. Normally the branch offices carry the same name as the head office, in some cases there might be a supplementary designation added, indicating that it is a branch.



## 4.2. Unselbständige Zweigniederlassung (dependent branch office)

An “*unselbständige Zweigstelle*” is not to independently participation in business transactions, it's a subordinated department of the head office and does not have any autonomy form. A dependent branch office is not eligible for Registration in the commercial Register; it only has to be reported to the local Department of Business.

## 5. Taxation

### 5.1. Partnerships

It is not the partnership itself, which is taxed, but the individual partners. The taxable profit is determined at the level of the company and allocated to the partners according to their shares. The partnership itself is only subject to trade tax.

### 5.2. Corporations

The Corporation itself is liable for taxation. Corporations are liable to corporate income tax, trade tax, capital gains tax and the solidarity surcharge.

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**Malaysian-German Chamber  
of Commerce and Industry** (171131-U)  
Deutsch-Malaysische  
Industrie- und Handelskammer