

Company Forms

Different Company Forms

Anyone can establish a business in Germany - irrespective of nationality or place of residence. There is no specific investment legislation in Germany, nor is a minimum percentage of German shareholdings required for foreign entrepreneurs.

Choice of Legal Form

Foreign investors can choose the most suitable legal company form as a corporation or partnership or conduct business via a Germany-based branch office. Either way, establishment procedures are straightforward with well-defined steps.

Decisive criteria for the choice of legal form are generally the intended function of the shareholders, liability and terms of taxation.

The basic structure of all company forms is stipulated by law which provides for predictability and legal certainty. The same legal conditions apply for foreign and local entrepreneurs.

Quick Facts: Corporations

When choosing the legal form of the company, a corporation is usually the best option for larger, established companies. There are four major forms of corporations under German law:

- Limited Liability Company (GmbH)
- Limited Liability Entrepreneurial Company ("Mini GmbH")
- Stock Corporation (AG)
- Partnership Limited by Shares (KGaA)

Main Characteristics

A corporation is a legal entity, meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. The corporation itself concludes contracts, holds assets and is liable for taxation.

Liability is limited to the corporation's business assets, including share capital. A minimum share capital is required, and the accounting obligations are more extensive than those for other business legal forms (such as partnerships).

Establishment of a Corporation

A corporation can be established by any number of different partners. Compensating the limited personal liability of the shareholder(s), corporations require a minimum share capital. It can be contributed in cash or in kind (e.g. real estate or patents). The establishment must be specified in the articles of association and certified by a notary. Additional establishment steps are necessary for certain forms of corporations.

The establishment procedure ends with registration in the commercial register (*Handelsregister*). Only at this point in time does the corporation's limitation of liability become effective. The application for the registration of the company in the commercial register has to be signed by the managing director(s) personally before a notary, who certifies

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and files it with the responsible commercial register in electronic form. Prior to the corporation starting business, the trade office (*Gewerbe-/Ordnungsamt*) must be notified of the business activity in question.

Please read more about business registration procedures here:

- [Business Registration](#)

Taxation of Corporations

Corporations are liable to corporate income tax, trade tax and solidarity surcharge. The average tax burden is less than 30 percent. In some regions, due to a locally variable rate of trade tax, it is under 23 percent.

For further information on the taxation of corporations please read here:

- [Corporate Income Tax for Corporations](#)

Forms of Corporations: Overview

Legal/Establishment Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability	Establishing Formalities
Limited Liability Company (GmbH)	One partner	EUR 25,000	Liability limited to share capital	Moderate
Limited Liability Entrepreneurial Company ("Mini GmbH")	One partner	EUR 1.00	Liability limited to share capital	Low-moderate
Stock Corporation (AG)	One partner	EUR 50,000	Liability limited to share capital	Moderate-high
Partnership Limited by Share (KGaA)	Two partners: general partner and limited shareholder	EUR 50,000	General partner: personal unlimited liability Limited shareholder: limited share liability	Moderate-high

Quick Facts: Partnerships

The main feature of a partnership is the personal commitment of the partners to their working efforts to the partnership. Any partnership requires at least two partners. There are four major forms of partnerships in Germany.

- [Civil Law Partnership \(GbR\)](#)
- [General Commercial Partnership \(oHG\)](#)
- [Limited Partnership \(KG\)](#)

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- [GmbH & Co. KG](#)

Their main difference lies in the liability of their partners and required registration obligations.

A partnership company (*Partnergeseellschaft* or *PartG*) is a form of partnership specifically designed for the joint exercising of professional freelance activities, such as architects. This company form is not further explained on the following pages. Please contact us if you have questions concerning the establishment of a partnership company. For contact information please refer to the link on the right.

Main Characteristics

In contrast to corporations, partnerships are not independent legal entities but associations of people. In partnerships, the individual partners responsible for the liabilities of the company (including private assets) act for the company. Limitations of liability for individual partners are only possible to a limited extent.

No minimum share capital is required, and the accounting obligations and publication requirements are less extensive than those for corporations.

Establishment of a Partnership

Establishing a partnership is easy and can be completed in just a few steps. At least two partners are required to establish a company. A minimum share capital does not have to be raised. The management of the company can only be carried out by partners.

Depending on the type of partnership, entry in the commercial register (*Handelsregister*) is required. The application is signed by all partners and must be filed by a German notary in certified and electronic form with the commercial register. If a business activity is carried out by the partnership, the trade office (*Gewerbe-/Ordnungsamt*) must accordingly be notified.

Please read more on business registration here:

- [Business Registration](#)

Taxation of a Partnership

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

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

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

For more information on the taxation of partnerships please refer to the following page:

- [Personal Income Tax for Partnerships](#)

Forms of Partnerships: Overview

Legal/ Establishment Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability	Establishing Formalities
Civil Law Partnership (GbR)	Two partners	Not required	Personal unlimited liability	Very low
General Commercial Partnership (oHG)	Two partners	Not required	Personal unlimited liability	Low-moderate
Limited Partnership (KG)	Two partners: general partner and limited partner	Not required	General partner: personal unlimited liability Limited partner: limited share liability	Low-moderate
GmbH & Co. KG	Two partners: general partner (GmbH) and limited partner (the general partner is typically the limited partner of the KG)	Not required	General partner (GmbH): personal unlimited liability Limited partner: limited share liability	Moderate-high

Quick Facts: Branch Offices

Any foreign company with a head office and registered business operations outside of Germany can establish a German branch office. A branch office is a suitable business form for a foreign company wanting to establish a presence in Germany for the purpose of initiating business and maintaining contacts with business partners.

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

- [Autonomous Branch Office](#)
- [Dependent Branch Office](#)

Main Characteristics

A branch office has no independent or separate legal personality distinct from the head office itself. In legal and organizational terms, it is part of the head office business and is thus subject to the law governing the head office. In this context, the foreign head office company is fully liable to the extent of its own assets for any claims creditors might assert against the branch office. Any obligations or debts incurred by the branch office are also legal responsibility of the foreign company.

Taxation of Branch Offices

A branch office is subject to taxation in Germany if it is considered as a permanent establishment according to the applicable double taxation agreement (DTA). An autonomous branch office is generally regarded as a permanent estab-

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lishment, whereas a dependant branch office is only ever considered a permanent establishment under certain conditions.

A German permanent establishment of a foreign corporation is taxed in Germany according to German taxation rules for corporations (corporate income tax, solidarity surcharge and municipal trade tax).

Read more about the taxation of companies in Germany here:

- [Company Taxation](#)

Forms of Branch Offices: Overview

Legal/Establishment Form	Legal Liability	Minimum Capital	Number of Persons Required	Establishing Formalities
Autonomous Branch Office (selbständige Zweigniederlassung)	Subject to the head office legal company form	None required	Minimum one person	Moderate
Dependent Branch Office (unselbständige Zweigniederlassung)	Subject to the head office legal company form	None required	Minimum one person	Very low

Other Forms

Offices that purely serve to observe the market and pave the way for initial customer contacts are often described as "representative offices." However, this term does not exist in German commercial law.

Once an office is used by a foreign company for commercial activities (thus forming part of the foreign company organization), it generally must be registered at least as a dependent branch office in Germany. This is typically the case if the foreign company has a permanent representative who conducts the commercial activities of the company in a sustained manner and, in doing so, is subject to its instruction.

An office managed by a self-employed third party (e.g. a commercial agent authorized by the company) might be considered a case in which no independent business activity is conducted on behalf of the foreign company. In this case, registration of the foreign company with the local trade office is generally not required. Decisive here is the actual level of independence of the agent and their freedom to act without instruction from the company.

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