

Business Establishment

There are different ways to enter the German market. Expanding foreign companies normally opt to establish a local subsidiary or register a local branch office. The establishment procedures are swift and efficient, in both cases requiring only a few clearly defined steps.

A subsidiary is an independent company established and predominantly held by another company (parent company). Foreign companies often choose the private limited liability company option (*Gesellschaft mit beschränkter Haftung – GmbH*) for local subsidiary formation. A branch office forms part of the foreign head office company's organization. There are two kinds of branch establishments: the autonomous and dependent branch office. These differ primarily due to the degree of independence from the head office company.

Setting Up a GmbH

The GmbH is the most widely used legal form for corporations in Germany. It combines high flexibility with relatively few obligations and enjoys a good reputation. Another advantage of the GmbH is the limitation of liability to its corporate assets. At least one shareholder (private individual or legal entity) is required in order to establish a GmbH. The nationality and residence of the shareholder(s) and the managing director(s) of a GmbH are irrelevant. However, the company must have a German business address and a local representative. The GmbH requires a minimum share capital of EUR 25,000. It can be contributed in cash or in kind (e.g. real estate or patents). A contribution in kind must, for example, be agreed upon in the articles of association, a valuation report is necessary, and the asset must be fully contributed.

Necessary Documentation

In order to successfully register a business in Germany, certain documentation verifying the existence of any parent company as well as the power of representation for persons acting on behalf of it is needed. Generally, an excerpt of the foreign commercial register as well as articles of association of the foreign parent company will be required. The documentation must be notarized and either legalized or issued with an apostille. It should also be accompanied by a certified translation into German language. Please notice that the documentation required can differ depending on the legal form and origin of the foreign company. It is advisable to consult a German notary at an early stage for individual advice.

GmbH Incorporation Procedure



Step 1 Drafting of Articles of Association

The articles of association shape the identity and constitution of the company. Thanks to the large scope for contractual design, the GmbH is a very flexible corporation form. Mandatory content includes share capital, shareholders and respective shares held, business name, registered office, and company purpose.



Step 2 Notarization of Articles of Association

The drafting and notarization of the articles of association are normally performed in one session by a German notary. The founding shareholder(s) adopt(s) its articles of association and appoint(s) one or more managing directors in a notarial deed.



Step 3 Payment of Share Capital

Once the articles of association have been notarized, a company account should be opened and the share capital deposited. A payment of EUR 12,500 in total is sufficient for registration with the commercial register of a standard EUR 25,000 GmbH (cash contribution).



Step 4 Commercial Register Registration

When the required share capital has been verifiably contributed to the GmbH, the managing director(s) apply for the registration of the GmbH in the commercial register (*Handelsregister*). The application is electronically filed by a notary. This must be personally signed by all managing directors of the GmbH (power of attorney not possible) and accompanied by documentation pertaining to the GmbH. If the commercial register considers all formation requirements to be fulfilled, the GmbH is registered and starts to exist as a legal entity with limited liability.



Step 5 Trade Office Registration

Before business operations are started, the trade office (*Gewerbe-/Ordnungsamt*) of the municipality in which the business is located, must be notified about the planned activity. A business license or permit is not necessary for registering the business in the majority of cases. However, a permit or authorization may be required for some business sectors. The trade office registration requires at least one local representative.

Setting Up a Branch Office

Any foreign company with a head office and registered business operations abroad can establish a German branch office. There are two different categories of branch offices: the autonomous branch office (*selbständige Zweigniederlassung*) and the dependent branch office (*unselbständige Zweigniederlassung*). A branch office has no independent or separate legal personality distinct from the head office itself. In legal terms, it is part of the head office business, which also is liable for any of its business obligations. A formation procedure is therefore not applicable – only the registration of the branch with German business registers is required.

The autonomous branch office is dependent upon the head office company at the internal level but engages in business activities independently. At the organizational level, autonomous branch offices are to a certain extent independent from the head office company: The autonomous branch usually has its own management with executive powers, a separate bank account, business assets and accounting (on its own or via the head office company). The dependent branch office focuses on maintaining contacts and initiating business in Germany. It performs support and implementation-related tasks without having any individual business discretion and is entirely dependent on the head office.

Legal Certainty

Business establishment procedures in Germany provide entrepreneurs legal certainty in the commercial law field – creating transparency and offering companies the highest level of security in their day-to-day business activities. Important functions are fulfilled by German civil law notaries, and Germany's unique commercial register.

German Notaries

Civil law notaries are appointed lawyers sworn to impartiality and entrusted with public functions. Depending on where in Germany the notary is appointed, he or she practices either as a "single profession notary" or as an "attorney-notary." The number of notaries in each federal state is limited in order to ensure independence and impartiality. In Germany notarization is required, amongst other things, for establishment of corporations and applications for entry in the commercial register. Notary fees are stipulated by law and subject to the value of the transaction. The notary fees for a GmbH establishment depend, among other things, on the share capital. The estimated total costs for a standard GmbH are approximately EUR 800.

 www.notar.de

Branch Office Registration



Commercial Register Registration

Registration in the commercial register (*Handelsregister*) is only required by the autonomous branch office. The application, which is electronically filed by a German notary, must include detailed information pertaining to the foreign head office company and the branch office. This includes, for example, documentation verifying the existence of the foreign company as well as the power of representation for persons acting on its behalf. Please note that the documentation required can differ subject to the legal form and country of origin of the foreign company. It is also advisable to consult a German notary at an early stage. A dependent branch office only requires registration with the trade office.



Trade Office Registration

Before starting their business operations, all business operators must inform the competent local trade office (*Gewerbe-/Ordnungsamt*). This applies to all companies regardless of company form (excluding freelance professionals). Accordingly, both the autonomous and dependent branch must register in the trade office before business operations are started. Generally, the same procedure applies as for the GmbH. As with registering a GmbH, trade office registration of a branch office requires at least one local representative in Germany. A business license or permit is not required in the majority of cases. However, it may be required for some business sectors.

Commercial Register

The public commercial register (*Handelsregister*) ensures legal certainty in the area of commercial law by providing important information about registered companies. It is administered by the local courts (*Amtsgericht*). Some of the company data is also available online. This means that it is fairly quick and easy to check the existence and power of representation of any given company. All corporations – as well as many other enterprises requiring business operations to be set up in a commercial manner – have to be registered in the commercial register. Any application for registration in the commercial register must be submitted by a German notary.



www.unternehmensregister.de