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Expansion of foreign companies in Germany

If you want to expand to Germany as a foreign company, you can, for example, establish a domestic subsidiary, a branch office or a permanent establishment or representative office. To start the business activity in Germany, generally a business registration and, if necessary, a separate state permit are required.

I) LEGAL FORMS AND FOUNDATION REQUIREMENTS

For expansion as a company based abroad, there are legally four forms of organization available to you in Germany. You can establish a domestic subsidiary, a branch office, a permanent establishment or a representative office.

1) DOMESTIC SUBSIDIARY

a) General

The subsidiary is a legally independent company in which the parent company holds a majority of the shares. A domestic subsidiary has its own legal personality independently of the foreign parent company. German law is applicable to the domestic subsidiary.

In particular, the following legal forms are available for you

- General partnership (OHG),
- Limited partnership (KG) or limited partnership with a limited liability company as general partner (GmbH & Co. KG),
- Limited liability company (GmbH),
- Entrepreneurial company (UG haftungsbeschränkt), and
- Joint stock company (AG).

The German legal provisions apply to the formation of the aforementioned companies. For example, an entry in the commercial register and a business registration are required.

b) Special example of the GmbH (limited liability company)

For foreign companies, the most popular legal form is probably the GmbH (limited liability company).

The GmbH needs a minimum share capital of at least EUR 25,000 (EUR 12,500 may be sufficient). For this, in practice, the GmbH needs a bank account in Germany. The liability of the GmbH is limited to the paid-up capital contribution. Prerequisite is the registration of the company in the commercial register.

You can establish a GmbH in Germany as well as buy an already existing so-called Vorrats-GmbH (shelf company).

The costs of establishing a limited liability company or taking over a stock limited liability company can amount to approximately EUR 2,500 to EUR 5,500 depending on time and effort.

c) Special example of the UG haftungsbeschränkt (Entrepreneurial company)

An entrepreneurial company (UG haftungsbeschränkt) can be established with less capital. It is a special form of the GmbH and also called "Mini-GmbH".

The foundation of the entrepreneurial company is possible with only EUR 1 share capital, but there is an obligation to build up equity until an amount of EUR 25,000. In principle, 25 % of the annual net profit (if any) must be allocated to a reserve (obligation to retain profits) until a capital of EUR 25,000 is reached.

This increase in the share capital can take place in two ways: Either by

1) a capital increase from additional contributions from existing or new shareholders paid into the company, or
2) a capital increase from company funds arising as a result of the retention.

In the case of conversion from company funds, this may only be carried out on the basis of audited annual financial statements in accordance with commercial law, which show equity of at least EUR 25,000.

Regardless of which method you choose, each form of capital increase requires notarization of the shareholders' resolution. After the capital increase to EUR 25,000 has been entered in the commercial register, the "UG" may be renamed "GmbH". This also needs to be entered in the commercial register.

2) BRANCH OFFICE

The German branch is part of the foreign company as a whole. This part is spatially and organizationally independent, but not legally. The branch does not have its own legal personality. It is therefore subject to the foreign corporate law of the head office. The decisive factor is the existence of a domestic organizational unit, which can continue as an independent company even without the head office abroad.

The business of the branch is required to be of a certain duration. The transactions must essentially correspond to those of the head office in particular, they must not be merely ancillary and execution transactions.

The branch has to be physically independent. For example, it needs its own bank account and separate accounting. It is not mandatory for the branch to have its own assets.

The branch must also be provided with personal independence. The manager of the branch must in principle be authorized to represent it independently in legal transactions.

The establishment of a branch office is effected by the actual process of its establishment. A business registration certificate and entry in the German commercial register are required. German law applies to the registration procedure.

3) PERMANENT ESTABLISHMENT OR REPRESENTATIVE OFFICE

A domestic permanent establishment is a branch or subsidiary of the foreign company as a whole, which is set up as a place of business but is dependent on the head office abroad. They constitute a dependent branch, which may not have a company name different from that of the head office. The permanent establishment carries out auxiliary business activities that serves to prepare, arrange or execute the main business of the foreign enterprise. There is no entry in the commercial register. However, for some industrial sectors, a registration with the responsible consumer protection office is required (e. g. gastronomy or facilities with particular relevance to hygiene and health).

The term "representative office", which is occasionally used by foreign companies, does not exist in the German trade or commercial law and is an undefined legal term. Either the office of the foreign company in Germany itself is commercially active as part of its own organization, in which case it is a permanent establishment. This must be registered under trade law. Or an office is opened which is managed by an ex-ternal and appropriately commissioned independent tradesman (for example, a commercial agent). In this case, there is no independent commercial activity of the foreign company in Germany.

II) COMMERCIAL REGISTER ENTRY, BUSINESS REGISTRATION AND SPECIAL PERMITS

A business registration is required for the commercial activity in Germany. Separate regulatory approval may also be required.

1) COMMERCIAL REGISTER AND BUSINESS REGISTRATION

Under German law, the commercial activity of the subsidiary, branch or permanent establishment in Germany has to be registered with the competent authority.

The registration in the commercial register is required for some legal forms, especially for domestic subsidiaries or branch offices. A permanent establishment does not have to be entered in the commercial register. A registration with the respective local municipality is sufficient.

Most legal forms must be registered both in the (electronic) commercial register and with the relevant municipal trading department. The local tax office will then be notified automatically about the registration.

2) SPECIAL PERMITS

Under German law, the registration of a business as such does not yet entitle the holder to commence commercial activity, provided that a special permit (e.g. restaurant license) or entry in the register of skilled crafts is required. Before commencing the activity, therefore, the relevant permit must be applied for, if necessary, from the competent authority or a professional body under public law.

III) MANAGEMENT

The domestic subsidiary, branch office or permanent establishment can be managed by both, domestic and foreign nationals. The company can also be managed from abroad.

German law does not, as a matter of principle, base the suitability of shareholders, managing directors, permanent representatives or managers on their place of residence or habitual place of abode. Therefore, foreign nationals, who are domiciled or reside outside of Germany, can also be appointed as authorized representatives of German subsidiaries, branches or permanent establishments.

We will be happy to advise you on which legal form is the most convenient for your business plans.

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