

## Foreign enterprises

Freedom of trade is a fundamental principle in Germany. Foreign enterprises require no special permits or approvals from the authorities in order to commence commercial activities. However, all enterprises (domestic and foreign) must register the start of business activities at the Ordnungsamt [Public Order Office] of the particular municipality (duty of notification). In some sectors (e. g. brokers, auctioneers, hotel and restaurant business, guard and security business) industrial law stipulates that the entrepreneur must fulfil certain criteria; here the same requirements apply to foreign enterprises as to German businessmen.

### Restrictions for non-EU foreigners

However, foreign nationals from non-EU countries who are to manage the enterprise in Germany require the so-called "Erlaubnis zur Ausübung einer selbständigen Tätigkeit" [Permit to Pursue Independent Commercial Activities] and a residence permit for Germany. These must be obtained from the Ausländerbehörde [Aliens Registration Office] of the municipality.

In contrast to entrepreneurs, General Managers, Members of a Board of Management, "Prokuristen" [holders of a general commercial power of attorney] or managers holding a general power of attorney, foreign employees require a work permit that must be applied for at the Employment Office before entering Germany.

The following **forms of establishment** are possible:

### Dependent permanent establishment

A dependent permanent establishment is in every respect dependent on the main office. It possesses no rights of its own and can therefore neither take legal action nor itself be sued. The invoices to the German customers also come from the "Central Office". The business must be registered at the competent Bezirksamt [District Office] and for this it is necessary to present a translated and certified extract from the commercial register for the (foreign) main office as well as a power of attorney for the person making the registration.

### Branch office

The branch office mainly conducts business for the main office of the enterprise but has a certain measure of independence. The invoices can be made out by the branch office. It has its own registered office and venue for jurisdiction, but it does not possess a legal personality of its own. The manager of a branch office has "Prokura" [power of procuration = full commercial authority] or limited commercial authority. The bookkeeping and preparation of a balance sheet are independent of the main business. The branch office must be registered by a notary public at the Amtsgericht [District Court] for entry on the Commercial Register. For this, the notary public requires above all a translated and certified extract from the commercial register for the (foreign) principal establishment as well as a power of attorney from the management of the enterprise for the person making the registration. Then it is also necessary to register the business at the Ordnungsamt [Public Order Office].

### **Private limited liability company**

Of all the legally independent forms of enterprises, the GmbH is the one most frequently chosen by foreign enterprises. The GmbH is a company limited by shares with its own legal personality that can be founded by one or more persons. These only bear liability for the liabilities of the company in the amount of their contribution to the capital of the company. Shareholders in a GmbH may be either natural persons or bodies corporate as well as partnerships. A GmbH is set up by concluding a notarised partnership agreement. It is also necessary to enter the company on the Commercial Register and to register the business. The share capital amounts to € 25.000 and can be contributed in the form of tangible assets.

The choice of the legal form for the activities of a foreign enterprise in Germany depends in particular on the degree of independence of the German enterprise, the size of the business, the entrepreneurial risk and on questions of tax. If the foreign enterprise wishes to appear as German as possible, it would be better to opt for the form of a branch office or a GmbH. As regards the accounting and concrete questions relating to tax, you should contact a tax consultant.

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