

Investment Guide to Germany

ISSUE 2017/2018



Foreword



Dear Reader,

The world's fourth-largest and Europe's best-performing and most stable economy, Germany continues to number among the world's favorite investment locations. Studies such as the Ernst & Young European Attractiveness Survey, A.T. Kearney's FDI Confidence Index and the UNCTAD World Investment Prospects Survey continue to place Germany in the world's top five FDI locations and as the number one FDI location in Europe across numerous categories.

Cutting-edge infrastructure, a sturdy industrial base, a highly skilled labor force, and moderate costs are commonly cited reasons for doing business in Germany – the Wall Street Journal has referred to Germany as a "high-tech, knowledge-driven powerhouse of manufacturing and exporting." Germany is the world's number three exporter.

The Ernst & Young study shows that Germany's growth drivers are in the transportation and automotive industries, information and communications technology, pharmaceuticals and biotechnology, as well as the energy and utilities sector. Driven on by strategies and concepts such as Industrie 4.0, the Energy Transition, Digitalization and the High-Tech Strategy from the Ministry for Economic Affairs and Energy, Germany has become a place where small and medium-sized enterprises can strive to innovate and disrupt, keeping the country robustly productive and on a path of continuous improvement in all areas of industry and life.

I am delighted to present this year's new and revised Investment Guide. The publication before you is the result of the hard work of our dedicated Investor Support Services team. Practical and easy to use, the updated guide walks you step-by-step through the process of setting up your own company in Germany. As this guide shows, setting up in Germany could hardly be more straightforward.

At Germany Trade & Invest we pride ourselves on being a global agency that acts locally, providing services tailored to meet potential investors' individual project needs. Our comprehensive range of free business advisory and project support services help smooth the path for easier investment. Talk to us to find out how we can help your business.

A handwritten signature in black ink, appearing to read "J. Friedrich".

Dr. Jürgen Friedrich
Chairman/CEO, Germany Trade & Invest

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Coming to Germany

Germany distinguishes between different kinds of residence titles for specific purposes subject to the length of stay and intended (business) activity in Germany. These include Schengen and national visas, residence and settlement permits. A Schengen visa (business visa) is sufficient for conducting most business and administrative activities that need to be organized prior to locating to Germany.

Residence Titles

Germany distinguishes between three different kinds of residence titles:

- Visas (Schengen visa and national visa)
- Residence permit
- Settlement permit

A visa authorizes the holder to enter and stay in Germany for a temporary period (up to 90 days in any 180-day period from initial date of arrival). A residence or settlement permit authorizes the holder to stay for the long term (more than 90 days in any 180-day period) or to work on a self-employed basis or as an employee in Germany.

Who requires a residence title?

EU citizens and citizens of the states of Iceland, Norway, and Liechtenstein do not require any form of visa, residence or settlement permit to be able to settle or work in Germany. Swiss nationals have to notify the local immigration office about their long-term stay in order to get a residence permit certifying their right to free movement.

Non-EU citizens generally require a Schengen visa for entry and short-term stays in Germany. However, individual rules apply for certain countries. Nationals from Argentina, Australia, Brazil, Canada, Israel, Japan, Mexico, New Zealand, South Korea, the United States, and Hong Kong, for example, can stay in Germany for up to 90 days (in any 180-day period from the date of first entry) without a visa. Non-EU citizens require a residence or settlement permit for long-term stays.

Application Procedure

The residence title generally has to be applied for at the competent German embassy or consulate general prior to entering Germany. The respective visa is then issued in the applicant's home country within a period of a few weeks. The application fee is typically around EUR 60 for a Schengen visa and EUR 75 for a national visa. Additional fees up to EUR 110 must be paid for a residence permit.

Visa application forms can be downloaded from the website of the German Federal Foreign Office (*Auswärtiges Amt*). It is also possible to bring the completed printed form to the interview at the visa section where it can be scanned electronically. The respective local German mission initially issues a national visa for entry into Germany. The national visa is subsequently converted into a residence permit by the competent local immigration office (*Ausländerbehörde*) in Germany.

Non-EU citizens from those countries exempt from the short-term stay visa requirements also require a national visa when entering Germany for long-term stay purposes. Exceptions apply for nationals from Australia, Canada, Israel, Japan, New Zealand, South Korea, and the United States who may enter Germany for long-term stay purposes without a national visa. These foreign nationals can directly apply for the necessary residence or settlement permit at the immigration office in Germany.

The Federal Foreign Office is able to provide detailed information on German visa requirements for foreign nationals. auswaertiges-amt.de

Visa: Company Establishment

The relevant residence title depends on the entrepreneur's nationality and particularly on the specific area of business activity intended in Germany. A residence permit is not generally required for the setting up of a business in Germany – provided that the business has a local representative on-site in Germany. However, a residence permit is required in those cases where the foreign national intends to run the business on-site in Germany.

Schengen Business Visa

A Schengen business visa is sufficient for most of the activities in the formation phase of a company. It enables its holder to stay in Germany for up to 90 days, during which time all fundamental establishment activities can be performed. These include, amongst other things:

- Signing and notarization of the articles of association
- Application for registration with the commercial register (submitted by a German notary)
- Trade office registration (provided at least one representative on-site in Germany is available)
- Other preparatory activities during the business establishment phase (such as opening a bank account or the conclusion of lease contracts)
- Negotiations and the conclusion of contracts with business partners

Setting up a company in Germany using a Schengen visa does not alone warrant residence permit issue at a later date. If necessary, a residence permit for self-employment or employment should be applied for in due time. A residence permit must generally also be applied for if the stay in Germany for setting up a company exceeds 90 days.

Residence Permit: Self-Employment

Entrepreneurs from non-EU countries managing a company on-site in Germany in a self-employed capacity require a residence permit for the purpose of self-employment. It may be granted if the planned business is expected to have a positive economic effect and has secure financing in place. An individual assessment of the intended business project is made by the local immigration office (*Ausländerbehörde*) taking a number of considerations into account. These include (e.g.):

- Viability of the underlying business idea
- Foreign national's entrepreneurial experience
- Level of capital investment and availability of capital
- Effects on the employment and training situation
- Contribution towards innovation and research in Germany

The local immigration office involves the local trade office as well as the local Chamber of Industry and Commerce (*Industrie- und Handelskammer – IHK*), the Chamber of Crafts (*Handwerkskammer*) and/or other competent authorities regulating admission to the profession concerned.

An overview of the residence permits required for different types of business activity in Germany is provided at the Germany Trade & Invest website. gtai.com/coming-to-germany

A residence title for the purpose of self-employment is limited in time for up to three years. A settlement permit (permanent) can be granted after three years if the investment project has been successfully realized and has stable income prospects.

Who is considered self-employed?

Foreign business operators are considered to be self-employed e.g. if they are:

- Entrepreneurs (including freelance professions)
- Partners in a partnership
- Majority shareholders of a GmbH who are also managing directors of the GmbH

Residence Permit: Employees

Employees from non-EU countries who are employed in a new subsidiary company in Germany require a residence permit for the purpose of taking up employment in Germany. As with a residence permit for the purpose of self-employment, a residence permit is issued to employees for up to three years. In general, the residence permit can be extended without any problems. A permanent settlement permit is issued after five years in most cases.

Federal Employment Agency Approval

As a rule, a residence permit for the purpose of taking up employment is only issued if, among other things, it is possible to demonstrate a specific offer of employment.

Approval from the Federal Employment Agency FEA (*Bundesagentur für Arbeit*) may be required subject to the foreign national's level of qualification and the characteristics of the job to be performed in Germany.

Certain professional groups can be granted a residence permit for employment without FEA approval. These include, among others:

- Executives (e.g. employed managing directors, managerial employees)
- Specialists holding a German university degree
- Scientific research personnel
- EU Blue Card applicants (see page 14)

FEA Approval Procedure

In cases where professional groups are not exempted from FEA approval, approval is granted where:

- no suitable German or EU employees are available (so-called "priority check"); and
- the foreign employee is hired at the same terms and conditions of employment as comparable German or EU employees.

Depending on the specific professional group, FEA approval without priority check is possible, for example, in the following instances:

- Internal company specialists and ICT Card applicants (see below)
- EU Blue Card applicants in certain professions (*see below*)
- Foreigners having successfully finished qualified vocational training in Germany (or abroad subject to recognition in Germany and certain other criteria being met).

Highly Qualified Employees

The so called "EU Blue Card" (*Blaue Karte EU*) allows highly qualified non-EU citizens to be fast-tracked to employment in Germany. Foreigners may apply for this special kind of residence permit if they hold a German university degree (or a proven comparable qualification) and provide documentary evidence of an employment contract with an annual gross salary of at least EUR 50,800 (2017). FEA involvement prior to issuing the EU Blue Card is not necessary.

The annual gross salary level is lowered to EUR 39,624 (2017) for professions with a particular skill shortage (e.g. medical doctors and science and engineering professionals as well as information and communications technology professionals). FEA approval is required for this type of EU Blue Card.

However, the FEA does not carry out a priority check in such cases, but instead establishes whether the non-EU citizen is employed on terms less favorable than otherwise apply to comparable German employees.

Once a German EU Blue Card is obtained, holders can receive a permanent settlement permit within 33 months. This period may even be reduced to 21 months in instances where a specified German language aptitude level can be established.

Intra-Corporate Transfers

In August 2017, Germany facilitated long-term intra-corporate transfers of specific staff categories by introducing the new "ICT Card." The ICT Card enables an intra-corporate transfer from a sending entity outside the EU to a host entity in Germany. Both entities must be a part of the same company or company group. Eligible employees are non-EU managers and specialists who have been employed in the sending unit for at least six uninterrupted months immediately preceding the transfer. The duration of the transfer must exceed 90 days and last up to a maximum of three years. Moreover, the work contract and, if necessary, the assignment letter e.g. need to state details of the transfer and proof of the employee's professional qualification. The ICT Card requires FEA approval without priority check.

Additionally, the short-term mobility of non-EU nationals in possession of an ICT Card issued by another EU state has been eased. Under specific conditions, this employee category may be able to work at a German company (belonging to the same company or the same group of companies) for up to 90 days within any 180-day period without a German residence permit. A notification including specific evidence to the German Federal Office for Migration and Refugees is required.

A black and white photograph of two people in business attire signing documents on a reflective table. A semi-transparent blue rectangle is overlaid on the right side of the image, containing the title and text. The background shows the hands and arms of the individuals, with one person's arm in a striped shirt and the other's in a dark suit. The documents are spread out on the table, and their reflections are visible on the glossy surface.

Business Registration

Germany has a unique system of public registers. The commercial register, which ensures legal certainty in the commercial law field, is of particular importance for entrepreneurs. The commercial register is court-based and provides information on merchants and commercial companies registered in Germany. This information creates transparency and also offers companies the highest level of security in their day-to-day business activities.

Commercial Register

The public commercial register (*Handelsregister*) provides legally relevant information about merchants and commercial companies. The commercial register contains, for example, information about:

- Company form and name
- Name of the shareholders/partners and/or the personally liable partner
- Managing director or the executive of corporations
- Capital stock of companies
- Liability limitations of shareholders/partners
- Issuing and revoking of the power of attorney
- Opening of insolvency proceedings
- Dissolving and ending of a company

Commercial Register Display

The commercial register is managed by the district court where it can freely be viewed by the public at no cost. The commercial register can also be consulted online through the common register portal of the German federal states (*Gemeinsames Registerportal der Länder: www.handelsregister.de*). Commercial register announcements can also be found at this portal. Some of the company data which is stored in the commercial register is also available electronically through the commercial register of the Federal Gazette (*Bundesanzeiger: www.unternehmensregister.de*).

Companies Required to Register

Companies required to register are those that are obliged to by law (e.g. limited partnerships and corporations) or that carry out a commercial business operation. This is individually determined by criteria such as the use of commercial accounting, annual turnover, capital resources and total number of employees. As a rule, all status-relevant actions of companies are subject to registration.*

Registration Procedure

The application for registration in the commercial register is electronically filed in publicly certified form by a German notary to the responsible commercial register.

Registration Costs

The total registration costs for inclusion in the commercial register consist of the fees for the notary's services (i.e. notarization and electronic filing), the fees charged by the district court for entry in the commercial register and a fee for "electronic publication." The fees for the notary and the commercial register are not fixed on an arbitrary basis but are regulated by law. They largely depend on the number of shareholders, share capital, company form, and the specific activity to be registered. Please note that further costs can be incurred by the provision of additional legal advice.

*Exceptions apply to small businesses, civil law partnerships (GbRs), freelancers, and dependent branch offices.

German notaries can be found online in the directory of the Federal Chamber of Notaries. notar.de

The Federal Chamber of Notaries provides information about the exact composition and level of notary costs on its website. bundesnotarkammer.de

Trade Office

Before starting business operations, all business operators must notify the trade office (*Gewerbe-/Ordnungsamt*) of the town or local district in which the business operation is located. Business licenses are necessary in some additional sectors (e.g. pharmacies, property developers, estate agents, brokers, security firms, public houses and hotels, and banks).

The liberal professions are not viewed as performing business activities and generally do not need to register with the trade office. These include, for example, lawyers, doctors, accountants, and architects. Some liberal professions have institutes for professional authorization and regulation as well as for handling complaints which can be contacted accordingly.

Registration Procedure

The registration of a business activity that does not require a license generally costs between EUR 20 and EUR 50. Additional costs apply for companies that require a business license. For the independent, non-industrial operation of certain trades (e.g. baker, carpenter and precision mechanic) entry in the Register of Craftsmen (*Handwerksrolle*) is also required. Affected trades are listed in the Crafts and Trades Regulation Code (*Handwerksordnung*) where they can be directly consulted.

Automatic Forwarding

The trade office automatically sends a copy of the business registration to the responsible tax office (*Finanzamt*). The responsible tax office then sends a registration form to the company for tax registration purposes. It also sends the registration to other relevant institutions such as the respective Employer's Liability Insurance Association (*Berufsgenossenschaft*), the corresponding Chamber of Industry and Commerce (*Industrie- und Handelskammer – IHK*), and the Chamber of Crafts (*Handwerkskammer*).

Business Chambers

In Germany, the Chambers of Industry and Commerce (*Industrie- und Handelskammer – IHK*) and the Chambers of Crafts (*Handwerkskammer*) function as the local interest groups of business operators in a specific region. The chambers realize more than just the general functions of professional associations for their members. They also:

- carry out active lobbying work by representing the interests of the company towards municipalities, state, and federal government;
- organize vocational training by defining the framework requirements and approving interim and final examinations;
- draw up certificates concerning, for example, admissible company names.

The umbrella association of the Chambers of Industry and Commerce, the DIHK, and the umbrella association of the Chambers of Crafts, the ZDH, offer an overview of all of the regionally responsible chambers.

dihk.de

zdh.de

In addition to this, the IHKs also provide information about the local economic framework conditions in a specific region and provide foreign companies with business contacts to possible regional partners. All IHK members are also able to draw on the comprehensive advice and services of the responsible chamber.

The chambers are generally the first point of contact in the event of day-to-day business problems. Membership of the IHK occurs automatically upon registration in the trade office without requiring special registration. The costs of membership of the chamber depend on the turnover of the applicant company.

Crafts professions have to register with the Chamber of Crafts prior to the trade office notification. Membership costs depend on turnover too.

A black and white photograph of three business professionals in a modern office setting. Two men and one woman are seated around a small table, engaged in a discussion. The man on the left is wearing a white shirt and dark trousers, with a jacket draped over his chair. The woman in the center is holding a document. The man on the right is also in a white shirt and dark trousers. They are positioned in front of a large window that offers a view of a cityscape. A blue rectangular overlay is placed on the right side of the image, containing the title and text.

Company Establishment

International companies seeking to set up a business in Germany can choose between different establishment forms. A separate company held by the foreign company – a subsidiary – in the form of a corporation is in practice often established for this purpose. However, it is also possible to establish a subsidiary in the form of a partnership or to set up a company held by private individuals. Existing companies can also conduct business via a German branch office. 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.

Corporations

The main feature of a corporation is the contribution of capital by shareholders. 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. Corporations are liable to corporate income tax, trade tax and a solidarity surcharge. Shareholders have limited personal liability. As such, a minimum share capital is required.

Establishment of a GmbH

The German limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*) is the most widely used legal form for corporations in Germany. The main reason for its popularity is the combination of high flexibility and relatively few obligations.

At least one shareholder (private individual or legal entity) is required in order to establish a GmbH. The GmbH has two mandatory corporate bodies. The main body is comprised of the shareholder(s) collectively in the shareholder meeting and the executive body of the managing director(s). The nationality and residence of the shareholder(s) and the managing director(s) of a GmbH are irrelevant. However, the company must have a physical German business address and at least a local representative.

For further information on the taxation of corporations please see chapter 5 (Company Taxation).

Germany Trade & Invest is happy to answer individual questions specific to the establishment of a company in Germany. Contact: invest@gtai.com

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). Liability is limited to the corporation's business assets including share capital.

Steps for the Establishment of a GmbH or UG

- 1 Drafting of articles of association
- 2 Notarization of articles of association
- 3 Payment of share capital
- 4 Registration in the commercial register
- 5 Trade office registration

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. Mandatory content includes share capital, shareholders and respective shares held, business name, registered office, and company object.

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) the articles of association and appoint(s) one or more managing directors in a notarial deed.

3. Payment of Share Capital (Cash Contribution)

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 standard EUR 25,000 GmbH registration in the commercial register.

German notaries can be found online in the directory of the Federal Chamber of Notaries. [notar.de](https://www.notar.de)

4. Registration in the Commercial Register

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. The GmbH comes into existence as a legal entity and its limitation of liability becomes effective upon registration in the commercial register.

5. Trade Office Registration

Before business operations are started, the trade office (*Gewerbe-/Ordnungsamt*) must be notified about the business activity in question. Required permits and verification of representatives must also be submitted.

Establishment of an UG

The limited liability entrepreneurial company – *Unternehmer-gesellschaft/UG (haftungsbeschränkt)* – is not a separate legal form of company, but a GmbH which has a minimum capital of less than EUR 25,000 and where cash subscription is required. This means that it is possible to set up a company with limited liability in Germany with a share capital of just one euro.

In order to compensate the initial absence of capital, the UG has to retain a quarter of its annual profit until it has accumulated the minimum share capital of an ordinary GmbH (i.e. EUR 25,000). The accumulated capital can then be converted into share capital and the UG altered into a standard GmbH. The UG – by terms of law – is generally subject to the same duties and rights as the standard GmbH (except notwithstanding the specific provisions mentioned above).

Establishment of an AG

The German stock corporation (*Aktiengesellschaft – AG*) is a company form intended for larger companies with a large number of shareholders. Eligibility for a stock exchange listing and the easy assignability of the shares make the AG ideal for attracting capital. Compared to the GmbH, the founding and organizational formalities of an AG are relatively high and inflexible due to mandatory rules. Conversely, the AG per se enjoys a high market reputation.

The AG has three mandatory bodies: the general meeting, the management board and the supervisory board. One special feature of the AG is the independence of the management board in not being bound by instructions in managing the company from the other two bodies. The supervisory board's main task is to supervise the management board, but it also appoints the management board, participates in certain decisions requiring its consent and reports to the general meeting. Fundamental corporate decisions are taken in the general meeting.

An AG can be established by one or more shareholders (private individual or legal entity). As is the case with the GmbH, nationality and residence of the AG's shareholder(s), management and supervisory board members are of no relevance.

However, the AG requires a German physical business address and a local representative. The AG must have a minimum share capital of EUR 50,000. It can be contributed in cash or in kind (e.g. real estate or patents). Liability is limited to the corporation's business assets including share capital. The AG establishment procedure is in principle similar to that for setting up a GmbH, albeit more complex.

The main steps for the formation of an AG by cash contribution are as follows:*

- Establishment of articles of association and subscription of shares in the form of a notarial deed of formation.
- Appointment of the boards. The founders appoint the first supervisory board and the first auditors (notarization required); the supervisory board then appoints the first management board.
- Drawing up of a formation report concerning the procedure of the formation of the company, followed by a (formal) formation audit.
- Payment of share capital. At least 25 percent of the par value of each share and the full amount of any premium has to be paid into a bank account.
- Registration of the company with the commercial register (*Handelsregister*). The application must be filed by a German notary.
- The trade office (*Gewerbe-/Ordnungsamt*) must be notified about the business activity in question before business operations can begin. Required permits and verification of representatives must also be submitted.

* Further procedures may be necessary, e.g. if specific financial risks including contributions in kind (*Sacheinlagen*) are contained in the articles of association or an initial public offering (IPO) is desired.

Partnerships

Characteristic for a partnership is the personal commitment of the partners to their working efforts in the partnership. 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.

Accordingly, it is not the partnership itself which is taxed (as 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.

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 be notified accordingly. Required permits and verifications of representatives must also be submitted.

For further information on the taxation of partnerships please see chapter 5 (Company Taxation).

Branch Offices

Foreign companies can also be active in the German market by setting up a branch office. In legal and administrative terms, a branch office is part of the head office company and not a separate legal entity (i.e. subsidiary). The branch office carries out similar business activities to the head office company. In this context, the head office company is liable for the debts of the branch office under the conditions of its constitution. In Germany, there are two kinds of branch offices which primarily differ due to the degree of independence from the head office company. However, common to both branch office forms is the fact that one representative on-site in Germany is required.

Autonomous Branch Office

Foreign (commercial) companies can set up an autonomous branch office (*selbstständige Zweigniederlassung*) in Germany if they are entered in a foreign commercial register (or a comparable directory). The autonomous branch office is dependent upon the head office company at the internal level but engages in business activities independently. However, the foreign head office company is liable for the business transactions concluded by the branch office.

At the organizational level, autonomous branch offices are to a certain extent independent from the head office company and usually have the following attributes:

- Management with the freedom to act according to their own judgment (i.e. with full power of attorney and the power to contract)
- Own capital resources and bank account
- Separate accounting (on its own or via the head office company)

The autonomous branch office must be entered in the commercial register (*Handelsregister*) and provide notification of any business activity it is practicing at the responsible trade office (*Gewerbe-/Ordnungsamt*). Required permits and verifications of representatives must also be submitted. The branch office can use its own name affix including the company name of the head office and its legal designation (for example: XY Ltd., Zweigniederlassung Berlin).

Dependent Branch Office

A dependent branch office (*unselbstständige Zweigniederlassung*) is a subordinate department of the head office company and does not have any autonomy from it. It is not able to independently participate in the general business transactions of the head office. Invoices have to be made out in the name of the head office company. An individual company name cannot be used. Accordingly, the dependent branch establishment does not have to be entered in the commercial register. It is only necessary for the business activity that is being practiced to be notified at the responsible trade office (*Gewerbe-/Ordnungsamt*).

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 is a term which 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.

Germany Trade & Invest's legal experts are pleased to answer any project-specific questions on the establishment of a branch office in Germany. Contact: invest@gtai.com

COMPANY ESTABLISHMENT

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) may be considered a case where no business activity is conducted on behalf of the foreign company. Where this is the case, registration of the foreign company with the local trade office is generally not required. In this instance, the actual level of independence of the agent and their freedom to act without instruction from the company is decisive.

Different Forms of Corporations

Legal Form	Minimum Number of Shareholders	Minimum Share Capital	Legal Liability
GmbH – Limited Liability Company	One shareholder	EUR 25,000	Liability limited to share capital
UG – Limited Liability Entrepreneurial Company	One shareholder	EUR 1.00	Liability limited to share capital
AG – Stock Corporation	One shareholder	EUR 50,000	Liability limited to stock capital

Different Forms of Partnerships

Legal Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability
GbR – Civil Partnership	Two partners	Not required	Personal unlimited liability
oHG – General Commercial Partnership	Two partners	Not required	Personal unlimited liability
KG – Limited Partnership	Two partners: general partner and limited partner	Not required	General partner: personal unlimited liability Limited partner: limited share liability
GmbH & Co. KG	Two partners: general partner (GmbH) and limited partner (the shareholders of the GmbH are typically the limited partners of the KG)	Not required for the GmbH & Co. KG, however the GmbH does require EUR 25,000.	General partner (GmbH): personal unlimited liability Limited partner: limited share liability

A grayscale photograph of a person in a white lab coat holding a tablet. The tablet screen shows a bar chart, a pie chart, and some text. A blue semi-transparent rectangle is overlaid on the right side of the image, containing the title 'Incentives' and a paragraph of text. In the background, there is a desk with a laptop, a pair of glasses, and a cup.

Incentives

Germany offers different financial support measures for investment projects tailored to the different requirements of the individual project development steps. Measures include supporting direct investment costs, labor-related expenses, and direct research and development project costs.

Incentives Overview

Incentives programs in Germany are available through different public funding instruments and for different funding purposes. The individual funding requirements may, for example, result from investment projects, research and development activities, personnel recruitment, working capital needs or other specific purposes. The different incentives instruments including grants, loans and guarantees are generally available for all funding purposes and can ordinarily be combined; thus matching the different business activity needs at different development stages of the company.

Incentives in Germany

Funding purposes				
Investments	Working Capital	Research & Development	Specific Purposes	Personnel
Financing supported by any of the following public funding instruments (combinations of instruments usually possible)				
Public funding instruments				
Grants	Loans	Guarantees	Equity Capital	Mezzanine Capital

Financial Support Eligibility Criteria

Set criteria determine the conditions under which a project is eligible for support. In this context, international investors are subject to the same criteria as German investors.

All incentives programs define eligible economic activities as well as the kind of support. The available public funding depends on project-specific factors such as the planned investment, investment location, investment sum, the planned financing structure, and size of the investing company.

Determining Company Size

Across Europe, company size is defined according to EU-set criteria. These divide companies into small, medium-sized and large company classifications according to:

- Number of employees in the company/group (mandatory) *plus*
- Turnover of the company/group *or*
- Balance sheet total of the company/group

Germany Trade & Invest's incentives experts identify the possible levels of support available for specific investment projects.
Contact:
invest@gtai.com

Criteria Determining Company Size

Company category	Staff head count	Annual turnover	Annual balance sheet total
Small enterprise	< 50	≤ EUR 10 million	≤ EUR 10 million
Medium-sized enterprise	< 250	≤ EUR 50 million	≤ EUR 43 million
Large enterprise	≥ 250	> EUR 50 million	> EUR 43 million

The criterion concerning the head count is compulsory. In addition, either of the annual turnover or the balance sheet criteria must also apply.

Source: European Commission

Based on the “Incentives in Germany” overview (page 38), the following section briefly outlines the most common as well as attractive incentives programs and their application fields in Germany.

Grants for Investments

Production site set-up or service location development is supported by investment incentives programs providing support in the form of cash grants.

GRW Cash Grants

The most important grant program for investments is the “Joint Task Improving Regional Economic Structures” (*Gemeinschaftsaufgabe “Verbesserung der regionalen Wirtschaftsstruktur”* – GRW).

The GRW is a national incentives program which steers the distribution of direct subsidies for investment projects across Germany in specified areas.

The maximum level of support that is permitted varies within the country. At its simplest, this is largely dependent upon a region’s level of economic development. In the maximum support areas in Germany, large companies can receive up to 20 percent of their eligible investment costs reimbursed; medium-sized companies up to 30 percent eligible costs reimbursed; and small companies up to 40 percent of eligible costs reimbursed. The maximum support areas are located in eastern Germany.

In certain regions of western Germany as well as in Berlin and the Leipzig region, support is also available through the GRW, albeit at a lower level. Here, large companies can receive up to 10 percent of their eligible investment costs reimbursed; medium-sized companies up to 20 percent eligible costs reimbursed; and small companies up to 30 percent of eligible costs reimbursed.

Eligible costs in the context of production site set-up or service location development refers to either the investment-related capital expenditure for new buildings, equipment and machinery or personnel costs during the establishment phase of a new business. Funding regulations determining, for example, eligible activities or level of support are set at the federal state level.

Detailed information about the available level of support in the different regions of Germany can be found at the [Germany Trade & Invest website](https://gtai.com/cash-incentives).
gtai.com/cash-incentives

Grants for R&D Projects

R&D incentives programs in Germany focus on non-repayable grants. These generally provide money for R&D project personnel expenditure. Other costs for instruments and equipment may also be eligible if they can be clearly assigned to the relevant R&D project.

Germany's High-Tech Strategy 2020

All research programs financed by the German federal government have been concentrated within the federal High-Tech Strategy. The High-Tech Strategy defines future fields of priority with a high dependency on continual high-tech research and development: digital economy and society, sustainable economy and energy, innovative working environment, intelligent mobility, healthy living, and civil security. Each area consists of a number of different R&D programs.

The level of support can amount to 50 percent of eligible project costs. In certain instances, small and medium-sized enterprises (SMEs) can benefit from higher levels of support.

The federal government periodically calls for R&D project proposals followed by a competition of best project ideas. Cooperation between project partners, especially between enterprises and research institutions, is usually required.

Technology-Open Support

A number of national programs which do not have a specific technological focus also exist. Application for incentives available under these programs is possible at all times (i.e. no prior calls for proposals or application deadlines). The Central Innovation Program for SMEs (*Zentrales Innovationsprogramm Mittelstand – ZIM*) is the most prominent of these programs.

R&D Support at the Federal State Level

As well as the programs provided by the federal government, the individual federal states also have their own R&D support programs. These are primarily targeted at SMEs and are normally technology open. However, some federal states offer programs that focus on specific technological fields. The level of support varies from program to program and mostly depends on the nature of the R&D project. Cooperation projects with other R&D partners are not always compulsory.

There are a number of different models for financing R&D investments in Germany. Germany Trade & Invest's experts will be happy to provide you with more information.

Contact:
invest@gtai.com

Germany Trade & Invest's incentives experts regularly update and define the specific support possibilities for R&D projects within the framework of the High-Tech Strategy. Contact:
invest@gtai.com

Grants for Hiring Personnel

Labor-related incentives play a significant role in reducing the operational costs incurred by new businesses. Germany's Federal Employment Agency (*Bundesagentur für Arbeit*) and the German federal states offer a range of labor-related incentives programs designed to fit the different company needs when building a workforce. They can be divided into four categories:

- Recruitment support
- Pre-hiring training
- Wage subsidies
- On-the-job training

The most attractive of these options are wage subsidies in the form of grants when hiring from the pool of the unemployed. In this case, up to 50 percent of the respective labor costs can typically be co-financed from the local job center for a period of up to one year.

Labor-related incentives are available across Germany independent of factors such as company size, industry sector, and investment project location. Programs can be carried out and adjusted by the local job center according to investor needs.

The regional job centers can be contacted via the central website of the Federal Employment Agency.
arbeitsagentur.de

The hiring of university graduates can also be supported through grants, with so-called "Innovation Assistant" programs available at the federal state level. Up to 50 percent of the respective labor costs can typically be financed for a period of one to two years subject to the program.

Public Loans for Different Purposes

Public loans occupy an important position in the German funding system – at federal (KfW Group), federal state (state development banks) and EU (European Investment Bank) levels. Long credit periods, attractive interest rates and repayment-free periods are the most important features of this funding instrument. Small and medium-sized enterprises in particular are often entitled to preferential conditions.

A further advantage exists for investors through the possibility of combining public loans with other forms of incentives such as grants for investments, R&D projects or personnel (see "Incentives in Germany" overview on page 38).

Public loans are available for the full range of funding purposes. The basis for integration of public loans into the project-financing structure are the term sheets for the respective loan program.

KfW Entrepreneur Loan (*KfW-Unternehmerkredit*)

Available for	Privately owned companies, group turnover max. EUR 500 million
Use for	Investments and/or working capital
Financing share	100% of the eligible expenses, max. EUR 25 million
Term	2, 5, 10 or 20 years
Period of fixed interest rates	2, 5, 10 or 20 years
Grace period	1, 2 or 3 years
Loan securities	Banking practice
Loan securities support	Partly exemption from liability for investor's bank

Information about additional products for foreign investors is available at the KfW website. kfw.de

One example of a flexible public loan program for the financing of investment projects including working capital is the KfW Entrepreneur Loan (*KfW-Unternehmerkredit*). Some industry-specific loan programs offer very attractive loan conditions for investors to promote investment in industries which are part of German economic policy focus. The fields of renewable energies and research and development, to cite just two examples, are singled out for specific investment focus.

Public Guarantees

New companies often experience difficulties securing financing as the required loans often cannot be collateralized to a sufficient degree. In these cases (with economically appropriate projects), so-called "public guarantees" can replace or supplement any shortfall in loan securities. This instrument delivers additional confidence in favor of the investor's bank concerning the financed investment project in Germany.

Different types of public guarantee programs exist subject to the financed amount to be secured by a public guarantee. The selection of the most adequate guarantee program depends also on the size of the enterprise and the investment region. In general, up to 80 percent of the total value of the concerning loan amount is insured.

Loan programs – with different levels of exemption from liability of the investor's bank against the loan program-providing development bank – provide a special solution for investors with an insufficient degree of loan securities. Such loan programs support investors to receive funding because the risk for the investor's bank is reduced.

Equity Capital

Certain business situations call for, or even require, an injection of equity capital instead of debt capital. Start-ups and technology companies are often financed by a high degree of equity. However, equity capital also represents an efficient method of business activity financing for companies from the classical industry sectors. In Germany, equity capital from public sources is available from a number of different investor channels.

Germany Trade & Invest's experts can help you contact financial partners in Germany.

Contact:
invest@gtai.com



Company Taxation

Germany offers a competitive system of company taxation. The average tax burden on corporate 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. This means that company taxation in Germany is highly competitive in comparison with other leading industrial nations. Internationally operating companies are able to avoid double taxation of profits made in Germany on the basis of differing international double taxation agreements.

Company Taxation Basics

Income taxation of companies in Germany consists of three components.

- In the first instance, corporations – such as the limited liability company (GmbH) and stock corporation (AG) – are subject to corporate income tax (*Körperschaftsteuer*), whereas the partners of partnerships are subject to personal income tax (*Einkommenssteuer*). Both taxes are defined by federal law.
- The so-called solidarity surcharge (*Solidaritätszuschlag*) is added to the corporate or personal income tax. This is set at a rate of 5.5 percent of the income tax rate (and not 5.5 percent of income as such).
- All business operations – corporations and partnerships alike – are also subject to the trade tax (*Gewerbesteuer*), which is imposed by local municipalities (i.e. the town or city where the company is based)

Taxation of Corporations

Germany does not have a nationally consistent total corporate income tax burden level, depending instead on locally set varying trade tax levels. For that reason, the total corporate income tax burden in some areas can be as low as 22.83 percent. The German corporate tax average is 29.83 percent.

Taxation of corporations is made up of the following components.

Corporate Income Tax

All corporations are liable to pay corporate income tax. The rate of tax is 15 percent on the taxable profits of the company. Corporate income tax is payable on undistributed as well as distributed profits.

Solidarity Surcharge

The solidarity surcharge is added to the corporate income tax. This totals 5.5 percent of the 15 percent rate of corporate income tax or 0.825 percent. Taken together, the corporate income tax and solidarity surcharge amount to a total taxable rate of 15.825 percent.

Trade Tax

All commercial business operations in Germany are liable to pay trade tax irrespective of their legal form. The tax rate is set by local authorities – which means that it can vary from one municipality to the next. However, the trade tax rate is generally the same for all businesses within one municipality. The trade tax rate starts at 7 percent. The German average trade tax rate is around 14 percent.

The corresponding rate of trade tax depends on two components:

- The tax base rate (3.5 percent throughout Germany)
- The multiplier (*Hebesatz*) stipulated individually by every municipality

Germany Trade & Invest is happy to inform you about the current levels of trade tax at different locations within Germany.
Contact: invest@gtai.com

The taxable income of the company is multiplied with the tax base rate (3.5 percent) which results in the so-called "tax base amount." This tax base amount is then multiplied with the corresponding municipal multiplier, which results in the sum total of trade tax due. The multiplier is set by each municipality. On average, it is around 400 percent but may not total less than 200 percent. There is no upper limit for the municipal multiplier. The municipal multiplier is often higher in urban than in rural areas. The solidarity surcharge is not levied on trade tax.

Taxation of Partnerships

Within partnerships, the partners generally take the sole entrepreneurial initiative and bear the related business risk. Accordingly, while the partnership itself is not subject to income taxation (as is the case with corporations), the individual partners are. The personal income tax rate for the corresponding partner applies in this case.

Taxation of partnerships is made up of the following components.

Personal Income Tax

In order to calculate the personal income tax burden of each partner, the taxable profit is determined at the company level and allocated to the individual partners according to their shares. As a rule, both the undistributed and distributed profits of a partnership are liable to personal income tax.

Income tax starts at:

- 14 percent for income that exceeds the annual exemption of EUR 8,820 and
- progressively increases to a top rate of 42 percent (applying for an annual income of EUR 54,058 or more).
- A higher rate of tax of 45 percent is levied on every euro earned over EUR 256,303 per year.

Specific regulations exist for spouses.

Solidarity Surcharge

As with corporate income tax, the solidarity surcharge of 5.5 percent is also added to the partner's corresponding rate of personal income tax.

Trade Tax

Partnerships, like corporations, are subject to trade tax. However, partnerships have an annual tax free allowance for the trade tax of EUR 24,500. The solidarity surcharge is not levied on trade tax.

Unlike corporations, partnerships can offset some of the trade tax they pay against personal income tax – to the total of 3.8 times the trade tax base amount. This means that there is in effect no trade tax burden for partnerships in municipalities with a multiplier of under 380 percent. Trade tax still has to be paid to the municipality. However, it can be offset against personal income tax.

Examples of offsetting the trade tax against income tax are available at the Germany Trade & Invest website. gtai.com/trade-tax

The tax rate to which the partner of a partnership is subject can be optionally adjusted to the tax rate of corporations. Detailed information is provided on the Germany Trade & Invest website. gtai.com/personal-income-tax

Taxation of Dividends

Withholding Tax

If a German subsidiary company distributes profits to its corporate foreign parent company (dividend payment) then a 25 percent rate of withholding tax (*Kapitalertragssteuer*) plus solidarity surcharge is payable. Where a double taxation agreement (DTA) between the Federal Republic of Germany and another country exists, the rate of withholding tax paid can be reimbursed according to the agreement stipulated in the corresponding DTA.

Different rules may apply for dividend payments by partnerships.

As a rule, dividend payments on the basis of a DTA are taxed at a reduced rate of taxation of just 5 percent, 10 percent, or 15 percent. The withholding tax paid in Germany can also be credited against the tax liability of the parent company which exists abroad or the parent company is made exempt from the taxation in regard to the received dividends. This means in effect that no double taxation takes place. Where the creditor of the dividend-paying German corporation is a foreign corporation and no DTA between Germany and the foreign nation exists, two fifths of the withholding tax paid can, as a rule, be reimbursed.

Within the EU, dividend payments between a corporate domestic subsidiary and its corporate foreign parent company are tax-free over and above a 10 percent stake which has been held for more than one year. The most common forms of corporations benefit from this preferential treatment. For details please see the EU Parent-Subsidiary Directive.

Final Withholding Tax

Profits which are distributed to private shareholders are liable to a final withholding tax (*Abgeltungssteuer*) of 25 percent plus the solidarity surcharge. The final withholding tax is retained by the debtor of the dividend or the institution managing the deposit (e.g. bank) and then paid to the tax office. However, the application of a DTA may lead to a lower withholding tax if the private stockholder resides in another country.

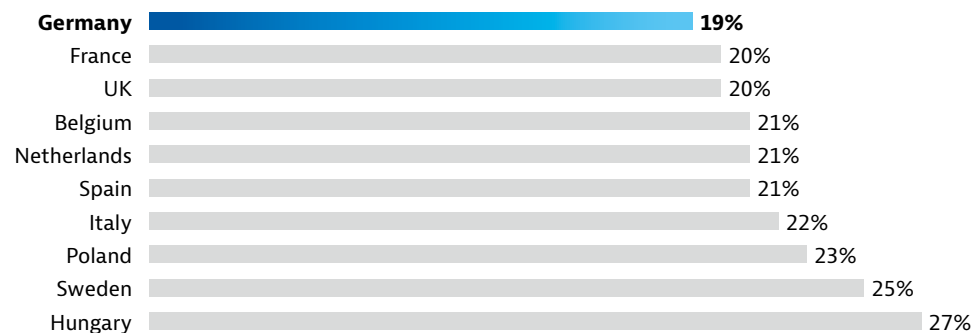
Value-added Tax (VAT)

Value-added tax (VAT) is a tax on the exchange of goods and services. Companies are obliged to add value-added tax to the prices of their goods or services and to invoice their customers accordingly.

In specific B2B transactions, the business client has to transfer the VAT to the tax authority – the so-called “reverse charge” procedure (this is applicable, for example, to certain types of construction work carried out by subcontractors). The reverse charge procedure is also generally applicable for “intra-community supplies” (i.e. the sale of goods or services from an entrepreneur in one EU member state to a commercial customer in another EU member state). Generally speaking, the commercial customer has to pay VAT in its EU member state in such cases (“intra-community acquisition”).

VAT Rate

The 19 percent VAT rate in Germany is below the European average. A reduced rate of 7 percent applies to certain consumer goods and everyday services (such as food, newspapers, local public transport, and hotel stays). Some services (such as bank and health services and community work) are completely VAT exempt. Value-added tax which is collected has to be paid to the responsible tax office on a monthly, quarterly or annual basis. The exact time frame depends on the company's level of turnover.

Value-added Tax in Selected EU Countries

Source: European Commission January 2017

Input VAT Deduction

On purchasing goods or making use of services, companies regularly have to pay value-added tax themselves. The taxes collected and paid can be balanced out in the VAT return as an input VAT deduction (*Vorsteuerabzug*). For companies, value-added tax represents a transitory item only.

Tax Declaration

Every taxpayer has to submit an annual tax declaration at the responsible tax office (*Finanzamt*) electronically. The tax office at the location in which the corresponding company has its (German) head office is responsible.

Registration at the Tax Office

With the establishment of companies, the registration takes place at the responsible tax office with the submission of the "tax assessment questionnaire." This questionnaire is sent to newly established companies by the tax office once they have been established (or once they have registered their business).

Tax Collection and Deadlines

With the most important types of tax (corporate income, personal income, trade, and value-added tax) collection is made via advance payments (normally monthly or quarterly) which are offset against the actual tax liability in the annual tax declaration. The tax declaration has to be submitted by 31 May of the following year. However, this deadline can be extended on request.

Information, forms, and software for submission of an electronic tax declaration are available at the following websites.

elster.de
esteuer.de

Information on the subject of tax declarations is provided in detail at the website of the German Federal Central Tax Office.
germantaxes.info

A black and white photograph of a woman with dark hair and bangs, smiling and standing with her arms crossed. She is wearing a dark blazer over a light-colored collared shirt and dark trousers. She is positioned on the left side of the frame. The background is a blurred industrial setting, likely a warehouse, with shelves and boxes visible. A semi-transparent blue rectangular box is overlaid on the right side of the image, containing the title and text.

Labor Market

The fundamental reforms made to the German labor market in recent years have created flexible working models which correspond with the requirements of the modern marketplace. Qualified personnel can be appointed quickly and without problem in Germany. Only a few regulations have to be taken into account before concluding a contract of employment.

Finding Suitable Staff

The regional job centers can be contacted via the internet site of the Federal Employment Agency. arbeitsagentur.de

Employers are basically free to define the recruiting process for potential employees. There are only a few guidelines that require consideration such as, for instance, the obligation to advertise and fill vacancies in a non-discriminatory way (particularly in terms of ethnic origin, gender, religion, world view, disability, age, and sexual orientation).

Recruitment Services

Companies are supported in various ways during their search for suitable employees. The Federal Employment Agency (*Bundesagentur für Arbeit*) offers professional recruitment services free of charge. It is represented with job centers in the municipalities throughout Germany. There are also numerous private recruitment services providers.

Public Support

A wide range of public programs supports the development of a company's pool of employees offering qualification and training measures for new employees. Subject to specific conditions being met, companies can also receive grants for hiring personnel.

For information on grants for hiring personnel please see chapter 4 (Incentives).

Flexible Employment Models

Germany has different models of employment, providing investors with flexible employment solutions – especially in the business start-up phase. Temporary employment agencies provide appropriate personnel at short notice.

Fixed-Term Contracts

As a rule, contracts of employment in Germany are not limited by time but include a six-month probationary period in most cases. Subject to agreement being reached, the contract of employment may be terminated at any time during the probationary period where two weeks' notice has been served.

However, it is also possible to conclude employment contracts which do specify an agreed set duration (fixed-term contract). Fixed-term contracts expire automatically on a specified date without a formal dismissal requirement. It is for the employer to decide whether to renew the contract or not.

Fixed-term contracts are generally limited to a maximum of two years and may be extended up to three times provided the total duration of contract does not exceed the maximum of two years. During the first four years of a company's existence in Germany, employment contracts may be limited or extended several times up to a total duration of four years.

Germany Trade & Invest provides information about suitable employment models for companies newly established in Germany.
Contact: invest@gtai.com

Temporary Employment

Temporary employment means that a company can hire staff without concluding an employment contract. Instead, the company hires staff from a temporary employment agency by concluding a service contract which regulates the conditions under which the employees are sent to the hiring company.

The employee is legally employed by the temporary employment agency, meaning that the employee receives financial remuneration only from the temporary employment agency. The hiring company pays a certain fee to the temporary employment agency as set out in the service contract.

The duration and the terms of termination of the service of the employee in the hiring company are not subject to labor regulations but only set out in the service contract between the hiring company and temporary employment agency. The statutory maximum hiring term for the same leased employee at the same company is generally 18 months. Exceeding the maximum duration period can result in an employment relationship between the temporary employee and the leasing company.

General working conditions such as weekly working hours and wages are usually determined in collective agreements between unions and the respective employers' associations of the temporary employment industry. These collective agreements provide flexible working hour models by using working hour accounts to adjust the demand of the hiring company and working time regulations. They can also modify the "equal treatment" principle of leased employees and permanent staff of the company to a certain degree.

Mini and Midi Jobs

"Mini jobs" (also known as "450 Euro jobs") refer to employment contracts where salary paid does not typically exceed a total monthly sum of EUR 450 (i.e. marginally remunerated employment) or those in which the employee only works a maximum of 70 days per year (i.e. short-term employment).

In the case of marginally remunerated employment, a commercial employer pays fixed rates of tax and social insurance contributions that total 31.29 percent (plus statutory accident insurance). In addition, the employee is generally liable for pension insurance contributions of 3.7 percent. However, the employee is free to apply for an exemption from pension insurance (opt-out option).

With short-term employment, no social insurance contributions are due for health and pension insurance. It is only necessary to tax the income and to pay statutory accident insurance and some other minor allocations.

"Midi jobs" (also known as "low-salary jobs") are employee-employer relationships with an average monthly salary in the EUR 450.01 to EUR 850 range.

Employees pay a reduced rate of social insurance for midi jobs. The employer pays the full contribution rate. However, this is below the contribution rate for mini jobs. The wage is normally subject to income tax.

Terms of Employment

In Germany, employment contracts are generally concluded in written form (although not obligatory). However, a binding German version is advisable as German courts require a German translation of any contract drawn up in another language in the event of any legal proceedings being instigated. There is no legally fixed form for a contract of employment. Nonetheless, it is highly advisable to define certain points, such as:

- The description of the location and activity;
- The date of appointment and notice periods (in the case of fixed-term employment contracts the duration of the contract);
- The daily or weekly working time;
- Arrangement of a probationary period;
- The level of the wage (gross) and possible bonuses;
- Vacation entitlement;
- Non-disclosure agreements or non-compete obligations;
- Contractual penalties.

Salaries and Wages

Wages are generally subject to individual negotiation in Germany. It must be noted that a general minimum wage of EUR 8.84 an hour applies. Higher minimum wages may be set in certain industries (e.g. those with universally applicable collective wage agreements).

There are also general exemptions from the national minimum wage. For instance, the following group categories are not covered by the minimum wage regulation:

- Young people under 18 years of age
- Students completing compulsory internships or other internships for up to three months
- Long-term unemployed (one year or longer) for the first six months in employment

Bonuses only have to be granted if they have been agreed in the individual employment contracts or in collective agreements.

Working Times

The legally permitted working time totals eight hours per day and 48 hours per week. Saturday is considered to be a normal working day. With a five-day week, the permitted weekly working time totals 40 hours. Sundays, in contrast, are generally considered to be days off. An extension of the working time to a maximum of ten hours per day is possible under certain conditions.

Overtime has to be compensated for with additional time off. An overtime bonus is possible but is not legally specified. Employees have the legal right to claim at least four weeks of paid vacation in a calendar year. The number of public holidays in Germany varies from one federal state to another.

Termination of Employment

A contract of employment can be terminated by the employer or the employee. Dismissals must be provided in writing and both parties have to observe the statutory notification periods.

Possible Reasons for Termination

An employment contract has to be terminated in written form (paper form). Electronic termination (e.g. via email) is not possible. Termination by the employer can only be effective if a specific reason for termination exists. This may be for personal, conduct-related or business reasons. The following examples illustrate the different categories.

- Dismissal for personal reasons:
Sustained illnesses or frequent bouts of short illnesses with a negative future prognosis, alcohol or drug addiction without a positive outlook for successful treatment
- Dismissal for conduct-related reasons:
Arriving at work late on a frequent basis, refusal to work, unapproved use of the internet for private purposes, absence without reason, criminal acts or violence at work
- Dismissal for business reasons:
Closure of operations, company restructuring or a lack of orders

Generally speaking, a reprimand must be issued to the employee before a conduct-related dismissal can take place. The business decision to cut back jobs for business reasons is only limited reviewable by labor courts.

Exceptions exist for small companies with not more than 10 employees and for employment contracts which have existed less than six months. Here, terminations of employment contracts can generally be issued without a reason. The company is only bound to the agreed or legally specified periods of notice.

Extraordinary (immediate) Termination

Immediate termination of employment may be considered in cases of serious misconduct rendering it unacceptable for either party to continue the employment relationship.

- Exemplary reasons for the employer: Continued non-performance of agreed work, disturbance of the general working environment, theft, disclosure of sensitive information, non-authorized competitive engagement
- Exemplary reasons for the employee:
Non-payment of wages, unlawful working

Immediate termination is only effective if the terminating party dissolves the employment within two weeks after the reasons for termination became known.

The German Social Security System

For more information on social security contributions please visit the Germany Trade & Invest website.

gtai.com/social-security

In contrast to some other industrialized countries, the core social security system in Germany is collectively financed by means of a process of redistribution. The current costs for pensioners, sick people, those in need of nursing care, and unemployed people are paid directly from contributions by employees and employers alike.

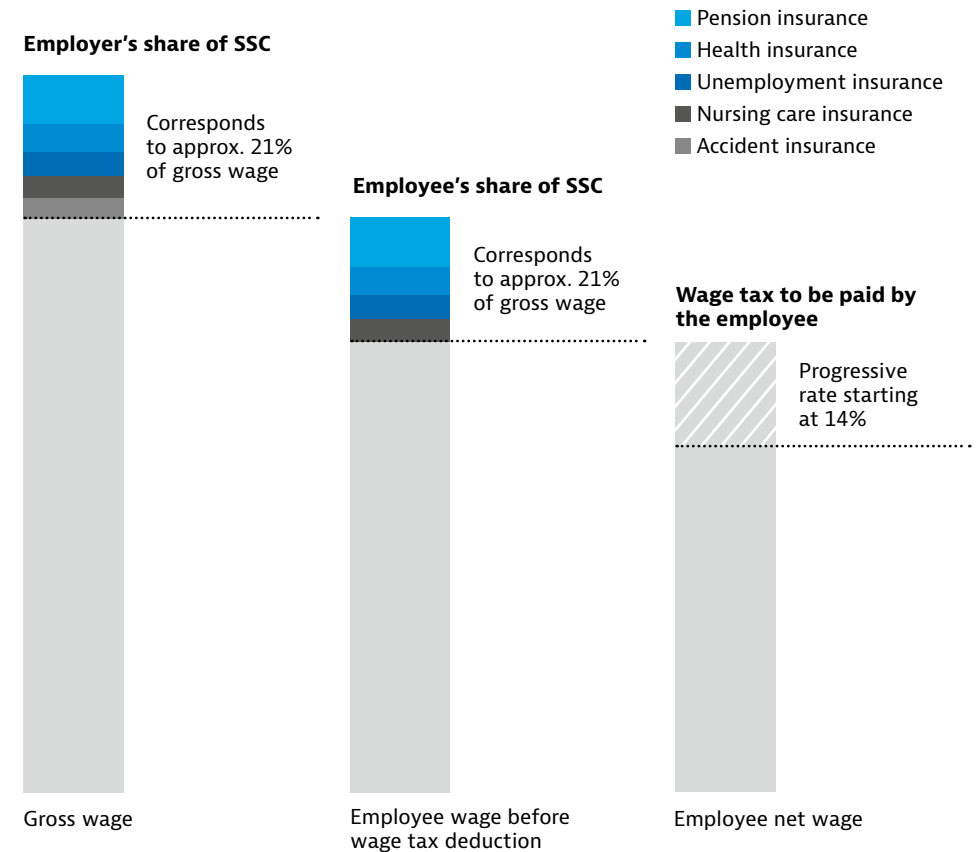
Components of Social Security Insurance

The German social security insurance system consists of:

- Pension insurance
- Health insurance
- Unemployment insurance
- Nursing care insurance
- Accident insurance

Generally speaking, social security contributions are roughly shared equally by employer and employee – with the exception of accident insurance costs which are solely borne by the employer. On reaching a monthly gross wage salary threshold, employees have the possibility to join a private health insurance company instead of the statutory health insurance obligatory for all employed people.

Allocation of Social Security Contributions (SSC)



Social security contributions are more or less shared equally by employer and employee. Each corresponds to approximately 21% of the employee's gross wage. Only the costs for accident insurance are exclusively borne by the employer.

Payroll Accounting

Employees in Germany receive a net wage or salary from which tax and social security contributions have already been deducted.

Wage Tax

Employees pay wage tax (*Lohnsteuer*) – a special term for the income tax paid by employees. The employer is obliged to deduct the wage tax due directly from the salary of the employee and to pay it to the tax office. This must be completed electronically with authentication on a monthly, quarterly or annual basis depending on the amount of total wage tax. To get the electronic certificate which is needed for authentication the employer has to register himself and employees electronically at the "Elster" Online-Tax-Portal (www.elster.de).

Social Security Contributions

Social security contributions are also withheld by the employer after calculation of the gross wage and transferred to the employee's health insurance company (which then distributes all of the contributions excluding accident insurance to all relevant parties). The employer must register each individual employee with their respective health insurance company. The company number (*Betriebsnummer*) is a prerequisite for registration. Employers must apply for a company number at the Federal Employment Agency Saarbrücken. Registration with the statutory accident insurance must be conducted separately with the Employers' Liability Insurance Association (*Berufsgenossenschaft*) by the employer. The employer must also pay the contributions for the accident insurance separately to this association.

For more information on how to apply for a company number or register with the Employer's Liability Insurance please refer to our website. gtai.com/social-security



Legal Framework

Legal security is always an important location factor for internationally operating companies. In Germany, clear legal structures and an independent judiciary guarantee the rapid processing of claims. The consistent protection of intellectual property serves to strengthen the trust in Germany as an investment location.

Business Law

English translations of the German Civil Code and other important laws are available at the German legislation portal online. gesetzze-im-internet.de

Law of Contract

German law of contract offers investors a reliable framework for action. The principle of contractual freedom enables the conclusion of contracts with freely selectable contractual partners and the free determination of the subject matter of the contract as long as the current law is not infringed. The basic structures of the key types of contract are governed in the German Civil Code (BGB). Contractual conditions are standardized to a high degree.

The general possibility to choose German law as applicable to a contract is safeguarded by European law.

Contracts concluded according to German law are normally short and simple in structure. Existing legal regulations apply unless agreed otherwise in the contract: this not only saves time with the drafting of the contract, but it also reduces legal consultation costs.

Purchase Law

The purchase contract is the type of contract concluded most frequently. The concise legal regulation of purchase law considerably simplifies the conclusion of contracts on a day-to-day basis. The United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to international delivery of goods contracts in Germany.

Commercial Law

German commercial law corresponds with international standards and keeps up with the fast-paced nature of commerce. Global trading practices and standard trading contractual clauses such as “Incoterms” (International Commercial Terms) are recognized. Global financing mechanisms for international trade such as letters of credit and payment guarantees also apply in Germany.

Basic Information on Litigation

No doctrine of *stare decisis* or binding precedent exists in German case law. This means that decisions made by courts are only binding for the participating parties and not other courts of law. Nonetheless, the decisions made by the superior courts are used as guidelines.

German courts undertake the organization and management of proceedings. The sequence of the proceedings in the civil process is primarily determined by the plaintiff. The plaintiff’s application for relief determines the court’s area of decision-making responsibility.

There are no “pretrials” – such as those recognized by American law – in Germany. Where a court orders a hearing of evidence it is up to each party, as a rule, to prove the facts of their specific case.

Costs of proceedings in Germany are low as they are calculated on the basis of the court costs and lawyer's fees. As a rule, the costs are to be paid by the party who loses the legal case. The costs are shared in the event of partial successes.

Intellectual Property

In Germany, intellectual property enjoys a high level of protection under the law. This is guaranteed by the registration of intellectual property rights. These intellectual property rights can be registered at the German Patent and Trademark Office (*Deutsches Patent- und Markenamt – DPMA*) for technical and commercial innovations in the form of patents, utility models, trademarks, and design patents.

On registering intellectual property rights, the same conditions apply for both foreign nationals and Germans. Applicants who do not have a place of residence or a branch in Germany have to nominate a patent attorney as the representative for the signing of the patent registration.

A harmonized system of administering patents and trademarks has been established for the common European market. European Union trade marks and Community designs are administered by the European Union Intellectual Property Office (EUIPO). European patents can be obtained from the European Patent Office (EPO).

Patents

When seeking patent protection in Germany, the applicant can choose between following the German national procedure or adopt the European route which confers protection in the contracting states designated as part of the single procedure.

Under German patent law, patents are granted by the German Patent and Trade Mark Office. In order to apply for registration, the applicant must submit an application providing specific information and pay a fee.

A patent can be granted for a completely new product or process or for something that is an improvement in the way things work or are made. In order to qualify for patent protection in Germany the invention must be new, involve an inventive step and be of industrial application. The possible maximum protection period is 20 years. Protection is geographically limited to Germany.

Where technical protection is required in just a few countries in addition to Germany it is possible to file individual applications in the respective countries.

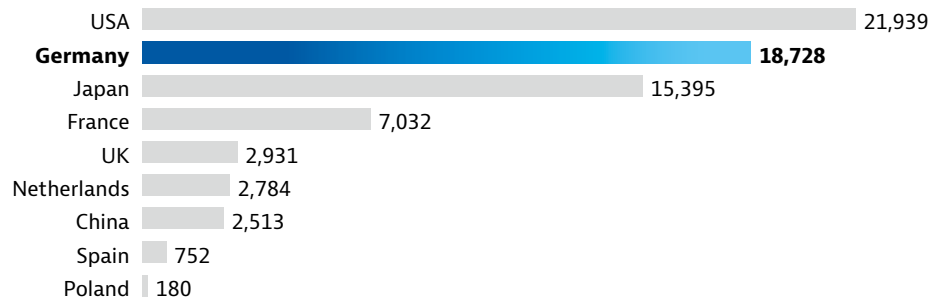
Information on application procedure and patent fees is provided on the DPMA website. dpma.de

Innovaccess provides guidance on how to apply for patents in the member states of the European Union. innovaccess.eu

European patents are granted under the European Patent Convention (EPC). The European Patent Organisation is an intergovernmental organization based on the EPC. Its executive body, the European Patent Office (EPO), provides a single procedure for granting European patents.

The European patent does not take effect in all EPC contracting states. The patent proprietor must indicate the countries in which patent protection is required and validate the European patent in these states within a short time limit after being granted. A number of different validation requirements may apply, such as paying fees to the national patent office or the provision of a translation into the official language of the respective member state.

Patents Granted at the European Patent Office by Country of Origin (2016)



Source: European Patent Office 2017

As such, the classical European patent can be seen as a bundle of national patents which are centrally issued. The protection period for the European patent is 20 years.

Utility Models

Technical inventions (which do not describe a procedure) can be protected as utility models at the DPMA. The registration of a utility model generally takes place considerably faster than that of a patent. A utility model grants full protection but expires after 10 years. For further information about utility models, please refer to the DPMA website.

Trademarks

A mark can be protected as a German trademark mainly by recording it in the register kept at the DPMA. With the registration of the mark, the owner acquires an exclusive, freely tradable right of use. The owner can include third parties in the use of the trademark through issuing a license and can also assert claims for compliance and damages in the case of infringement.

Official registration can be made clear by positioning of the ® (registered trademark) sign after the mark. If the owner pays the renewal fee every 10 years, trademarks may be renewed without time restrictions.

For details concerning the application process and fees, please refer to the EPO website. [epo.org](https://www.epo.org)

Protection of a mark throughout the European Union is possible by registering a European Union trade mark at the European Union Intellectual Property Office (EUIPO).

International protection can also be guaranteed by registering a trademark at the World Intellectual Property Organization (WIPO). In Germany, this application has to be carried out through the DPMA.

Designs

New product designs can be registered by the DPMA. The owner acquires the exclusive right of use for the corresponding design. The term of protection can be up to 25 years, if fees are paid correctly. EU-wide and international protection can be attained by registering a community design at EUIPO (at the EU level) or an international design at WIPO.

Licenses

Industrial rights of use can be granted to third parties through the issue of an exclusive or general license. Through the issuing of the license, the license holder gains corresponding rights. In return, the license holder makes a payment to the licensor. It is possible to distinguish between exclusive and general licenses. An exclusive license authorizes just one licensee for use within a certain area. A general license authorizes several licensees in the same place at the same time (depending on the configuration of the contract).

Real Estate

Suitable real estate for business premises or for accommodation in Germany can be found in regional daily newspapers, online markets and brokers. Commercial real estate is often owned by insurance companies, banks, investment companies, funds, and real estate holding companies.

Each German municipality has a local Real Estate Office (*Liegenschaftsamt*) that administers developed and undeveloped state-owned real estate where information about real estate for sale can be obtained. The Federal Property Administration (*Bundesanstalt für Immobilienaufgaben*) also has property to privatize.

Land Registers and Acquisition of Real Estate

Land registers (*Grundbuch*) contain a record of the entire German territory, providing information on ownership in land and apartments as well as any existing encumbrances. The German land register is indefeasible, meaning that, for example, a title insurance or report on a title is dispensable.

Real estate purchase contracts in Germany require notarization in order to be effective.

The transfer of ownership of real estate requires:

- an agreement (*Auflassung*) notarized by a German notary between the parties that the ownership shall pass from the seller to the purchaser (generally performed in the real estate purchase contract), and
- the entry of the purchaser in the land register.

For more information about notarization and notaries please refer to the website of the Federal Chamber of Notaries. [notar.de](https://www.notar.de)

Since some time may pass between the conclusion of the transfer agreement and the final entry of the purchaser in the land register, the purchaser normally applies for registration of a priority notice (*Eigentumsvormerkung*). The priority notice gives the purchaser comprehensive protection against dispositions made by the seller after its entry.

The acquisition of real estate in Germany does not in general require a permit (exceptions apply for real estate intended for agricultural or forestry usage).

Addresses

Shareholder

Federal Ministry for Economic Affairs and Energy
Scharnhorststraße 34-37, 10115 Berlin
www.bmwi.de

German Economy Federations

AHK Worldwide Network of German Chambers of Commerce
Breite Straße 29, 10178 Berlin
www.ahk.de

BDI Federation of German Industry
Breite Straße 29, 10178 Berlin
www.bdi.eu

BGA Federation of German Wholesale,
Foreign Trade and Services
Am Weidendamm 1A, 10117 Berlin
www.bga.de

DIHK Association of German Chambers of Commerce
and Industry
Breite Straße 29, 10178 Berlin
www.dihk.de

VDI Association of German Engineers
VDI-Platz 1, 40468 Düsseldorf
www.vdi.eu

ZDH German Confederation of Skilled Crafts
Mohrenstraße 20/21, 10117 Berlin
www.zdh.de

German Industry Associations

BDEW German Association of Energy and Water Industries
Reinhardtstraße 32, 10117 Berlin
www.bdew.de

BITKOM Federal Association for Information Technology,
Telecommunications and New Media
Albrechtstraße 10, 10117 Berlin
www.bitkom.org

BVE Federation of German Food & Drink Industries
Claire-Waldoff-Straße 7, 10117 Berlin
www.bve-online.de

BVMed German Medical Technology Association
Reinhardtstraße 29b, 10117 Berlin
www.bvmed.de

VCI German Association of the Chemical Industry
Mainzer Landstraße 55, 60329 Frankfurt/Main
www.vci.de

VDA German Association of the Automotive Industry
Behrenstraße 35, 10117 Berlin
www.vda.de

VDE Association for Electrical,
Electronic & Information Technologies
Stresemannallee 15, 60596 Frankfurt/Main
www.vde.com

VDMA Mechanical Engineering Industry Association
Lyoner Straße 18, 60528 Frankfurt/Main
www.vdma.org

ZVEI German Electrical and Electronic
Manufacturers' Association
Lyoner Straße 9, 60528 Frankfurt/Main
www.zvei.org

Federal States Partners

Baden-Württemberg International
Willi-Bleicher-Straße 19, 70174 Stuttgart
www.bw-invest.de

Invest in Bavaria
Prinzregentenstraße 22, 80538 München
www.invest-in-bavaria.de

Berlin Partner
Fasanenstraße 85, 10623 Berlin
www.berlin-partner.de

Brandenburg Invest (WFBB)
Babelsberger Straße 21, 14473 Potsdam
www.wfbb.de

Bremeninvest
Langenstraße 2-4, 28195 Bremen
www.wfb-bremen.de

Hamburg Invest
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www.hamburg-invest.com

Hessen Trade & Invest
Konradinallee 9, 65189 Wiesbaden
www.hessen-trade-and-invest.com

Invest in Mecklenburg-Vorpommern
Schlossgartenallee 15, 19061 Schwerin
www.gfw-mv.de

Ministry for Economics, Labour and Transport
of Niedersachsen
Friedrichswall 1, 30159 Hannover
www.nds.de

NRW.INVEST
Völklinger Straße 4, 40219 Düsseldorf
www.nrwinvest.com

ISB Investment and Economic Development Bank
of Rheinland-Pfalz
Holzhofstraße 4, 55116 Mainz
www.isb.rlp.de

gwSaar Saarland Economic Promotion Corporation
Balthasar-Goldstein-Straße, 66131 Saarbrücken
www.invest-in-saarland.com

Saxony Economic Development Corporation
Bertolt-Brecht-Allee 22, 01309 Dresden
www.invest-in-saxony.net

Investment and Marketing Corporation of Saxony-Anhalt
Am Alten Theater 6, 39104 Magdeburg
www.invest-in-saxony-anhalt.com

WT.SH Business Development and Technology Transfer
Corporation of Schleswig-Holstein
Lorentzendamm 24, 24103 Kiel
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LEG Thüringen - State Development Corporation of Thuringia
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Germany Trade & Invest (GTAI) is the foreign trade and inward investment agency of the Federal Republic of Germany. The organization advises and supports foreign companies planning to expand into the German market and assists German companies seeking to enter foreign markets.

Investment Location Germany

GTAI provides close-to-market information to international companies looking to enter German markets. Our specialist industry teams prepare all of the relevant information essential to business success in Germany. We provide:

- Market and industry reports
- Market entry analyses
- Tax and legal information
- Incentives and financing information

Business Location Services

GTAI supports international companies from market entry to business start-up in Germany. Expert project teams advise and assist in the business establishment phase. We provide:

- Legal and tax-related project support
- Incentives and financing advisory services
- Site visit organization
- Local partner and network matchmaking
- Public and private partner coordination

About Us

Germany Trade & Invest (GTAI) is the economic development agency of the Federal Republic of Germany. The company helps create and secure extra employment opportunities, strengthening Germany as a business location. With more than 50 offices in Germany and abroad and its network of partners throughout the world, GTAI supports German companies setting up in foreign markets, promotes Germany as a business location and assists foreign companies setting up in Germany. All investment services and related publications are free of charge.

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