

# Successful Business in Germany

Law and Tax Guide

**Salger**

Rechtsanwälte  
Partnergesellschaft  
[German Professional  
Partnership]

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## 1. Why Germany?

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### 1.1. Germany's 'Selling Points'

"Made in Germany" is a quality seal appreciated all over the world and certainly one of the reasons for Germany having continuously been Export World Champion or Vice-Champion for more than 20 years. Germany is the largest economy in Europe, worldwide ranked 4<sup>th</sup> by GDP by the World Monetary Fund. Germany's economy is characterized by a constantly growing service sector (73.5%), a strong productive sector (24.4%) and a small primary sector (2.1%). Germany's industry with a high productivity and diversity has been the growth engine of the country's economy after World War II, maintaining leading positions in chemical, machine-building, automotive and other sectors worldwide.

A population of 82 million with a per capita income of 42.7 KEuros makes Germany one of the most competitive consumer markets in the world. Besides, being located in the centre of Europe, provided with top infrastructure, Germany is the model location of a 'base camp' for a successful access to the European Union as the world's biggest economic area.

Frankfurt Airport is the second largest in cargo and the third in passenger transport on the continent. Dense road and railway systems and the overseas ports of the North Sea complete the infrastructural provisions of Germany. Consequently, an investment in Germany is at the same time an investment in the European market.

The banking system and the public administration are efficiently organised. Therefore, possible permits to be granted by administrative authorities can be obtained swiftly. There are no restrictions regarding the transfer of funds, shares and other financial instruments.

A stable political and social system constitutes the framework for a safe investment in Germany: The Federal Republic of Germany is a parliamentary republic, based on a representative democracy and a multi-party system, all anchored in the 1949 Constitution, the Basic Law (Grundgesetz).

Germany is a federalist state in which the 16 member states retain

considerable legal and economic importance. Thus, Berlin, the capital, does not play a major role in economic affairs. The main business centres of Germany are Frankfurt, the area Cologne/

Düsseldorf, Hamburg, Munich and Stuttgart. It is therefore necessary to make a choice for a location in Germany since the main businesses are split all over the country.

## 1.2. Germany's Diversity

All major cities of Germany have been heavily bombed and destroyed during World War II. However, there has been an enormous effort to restore and reconstruct the cities, especially the older parts, as they were before and there is a great cultural effort visible throughout the country.

Each major city has a good number of museums of all kinds and many of them their own classical orchestras and opera houses which are in service. There are more opera houses in service in Germany than in the rest of the world put together.

Likewise, all major cities have their own classical theatres as well as other institutions with cultural ambitions. Therefore, culture plays a large role in the mind of many Germans. Many of them regularly go to the theatre, opera or to concerts of classical or modern music.

For many years German "cuisine" has been considered to be of a rather low standard. But this has changed enormously in the past decades. There are also German restaurants highly ranked in the specific restaurant guides, such as Michelin and so on. Likewise, German wine can in many fields compete with the best wines of France, Italy and Spain.

In terms of international cuisine, the visitor can find Italian, French, Spanish, Greek, Asian and other restaurants with a national background, but in the historic parts of most cities he can also enjoy traditional German food and drinks like "Green Sauce" and "Apple Wine" in Frankfurt-Sachsenhausen, where our office premises are located.

Many tourists come from abroad to visit the German countryside. More than one third of the territory is covered by forests. Beautiful beaches with unique protected

nature can be found on the North Sea and Baltic Sea coasts. The Alps in the south and many lower mountains spread over all the country and innumerable pictorial lakes invite to have a time-out. Scenic castles, like the original Disney castle "Neuschwanstein" in

Bavaria, and historic towns like Heidelberg or Rothenburg with buildings conserved for many centuries make it worth travelling in this country. There are plenty of possibilities to escape into the countryside from all major cities.

## 1.3. Intercultural Aspects of Business in Germany

"Germany voted as 'least funny' country in the world", as the doubtful headline of an article published in The Daily Telegraph in summer of 2011 stated, is certainly not an argument to promote living in Germany. But knowing how to handle the Germans, there are much more reasons to do so:

### Reliability

Germans are indeed quite serious at least in terms of business and love to plan thoroughly, appearing sometimes quite inflexible. But seen from the other bank of the river, this also means that you can strongly rely on anything you have agreed on with your German business partner. Business and investment in Germany is thus quite foreseeable and less risky than in most other countries of the world. Nevertheless, the other party will

expect you to also stick to your compromises, contracts and especially time schedule.

### Meetings

Germans love to work efficiently. When meeting with business people, they will always want to know what are the purpose and the target of such an appointment, although they might not have asked for it literally. When arranging a meeting, it will always be for a precise day and time and never for a vague period like 'sometime next week'.

Punctuality is a necessity in Germany whether for business or private meetings. In case of any delay for whatever reason it is a must to inform the counterpart about these circumstances in time in order to not infringe the partner's sense of punctuality.

## 2. Legal Framework

### 2.1. General

Germany offers companies and private investors alike a highly efficient legal system: Law - made in Germany!

All important legal issues and matters are governed by comprehensive legislation in the form of statutes, codes and regulations. The most important legislation in the area of business law includes:

- the Civil Code (Bürgerliches Gesetzbuch, abbreviated as BGB), which contains general rules on the formation, performance and enforcement of contracts and on the basic types of contractual agreements for legal transactions between private entities;
- the Commercial Code (Handelsgesetzbuch, abbreviated as HGB), which contains special rules concerning transactions among businesses and commercial partnerships;
- the Private Limited Companies Act (GmbH-Gesetz) and the Stock Corporations Act (Aktien-gesetz), covering the two most common corporate structures in Germany the GmbH and the AG;

- the Act on Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, abbreviated as UWG), which prohibits misleading advertising and unfair business practices; and
- the Act against Restraint of Competition (Gesetz gegen Wettbewerbsbeschränkungen, abbreviated as GWB) or Cartel Law.

German law is both predictable and reliable. The legislator sets the systemic and structural parameters, while lawyers and civil law notaries use the law to shape and organise specific situations.

Courts and private arbitration tribunals are thus able to focus on their core functions. Efficient rules of procedure enable a swift, competent and predictable decision-making process. Once you have obtained an enforceable title by way of court order, settlement in court or executory deed, you can avail yourself of Germany's well-established enforcement laws and use the official enforcement services. They will ensure that you are able to consistently assert your rights.

### 2.2. Legal forms of doing business

#### Commercial agents

German statutory law of commercial agents is as old as the German Commercial Code of 1897. In general, German agency law protects the agent's rather than the principal's interest. Accordingly, most provisions of this law are mandatory. Deviation from these mandatory provisions is, however, allowed where the agent has no place of business in the European Community.

Pursuant to sec. 84 Commercial Code, the commercial agent (Handelsvertreter) is defined as a self-employed businessman who is

permanently entrusted to arrange or close transactions on behalf of, in the name of, and on account of one or more principals. In order to qualify as an agent, a businessman must be in a position to organise his business activities freely and independently. If these requirements are not fulfilled, he may qualify as an employee.

A further distinction has to be made between an agent and a commission merchant (Kommissionär or Kommissionsagent) who acts in his own name but for a principal in areas where the principal wishes to remain

#### Business hours

General office hours in Germany are Monday to Friday from 8 or 9 am to 5 or 6 pm, depending on the client structure and the tradition of a company. When opening an office which is dealing with German clients, a permanent presence of staff and phone service in these opening hours should be guaranteed. Meetings and phone conferences outside these time frames are subject to individual stipulation and will be usually accepted especially in case of intercontinental contacts.

The formerly very restricted shopping hours governed by an old-fashioned Shop Closing Act have given way to a very liberal shop closing policy which nowadays only offers special protection for Sundays when shops remain closed. However, bank and post office hours tend to be much shorter and should be checked beforehand in case of transactions depending on a deadline.

the commercial register at validly exists or who can represent an [www.handelsregister.de](http://www.handelsregister.de). Questions such as whether a business partner organisation and sign on its behalf can be answered very quickly, without any need for costly legal opinions.

The commercial register is a technically safe and cost-effective solution for its users. All communications with the register take place electronically, resulting in efficient and speedy workflows. All the documents submitted to the register are available online.

Land registers contain a record of the entire German territory, providing information on ownership in land and apartments as well as any existing encumbrances. In contrast to other countries, the

content of the German land register (Grundbuch) is indefeasible. This allows for the greatest possible transparency, resulting in real estate transactions in Germany being both extremely safe and reliable. A buyer can completely rely on the information in the land register and has no need to take out expensive title insurance.

#### ➔ Background information

The economic benefits of secure registers are particularly apparent when taking a look at countries without comparable registers: The FBI, for instance, reported that the US real estate market suffered billion-dollar losses in 2008 as a consequence of mortgage fraud and identity theft.

## 2.4. Contract Law

### Formal requirements

As a general rule, German law imposes no formal requirements on the validity of contracts. Thus, oral agreements are generally valid. Despite the general validity of oral agreements, it is advisable and, in commercial dealings, common practice to execute agreements in writing, since it may otherwise be

difficult to prove the terms of the agreement in case of a dispute.

### Written contracts

Those contracts that must be in writing in order to be valid are specified in the Civil Code and other statutes. The more important requirements cover:

- a) leases of land for longer than one year (sec. 566 Civil Code);
- b) guarantees of collectability (sec. 766 Civil Code);
- c) promises and acknowledgement of debts (secs. 780 et seq. Civil Code).

German courts are rather inflexible in determining whether the written form requirement is met in any given case (sec. 126 Civil Code). In principle, all agreed provisions must form part of one uniform deed and such writing requirements apply to the entire agreement, including any attachments, amendments and subsequent modifications. Such a deed must be signed by the parties in person at the end of the deed (a telegram or telefax would not be sufficient).

### Notarisation

Certain transactions are only valid if executed before a notary. In particular, contracts for the sale of land and for the creation of certain interests in land (e.g. mortgages), and certain corporate law transactions (e.g. establishment of a limited liability company (GmbH) and contractual obligation to assign shares in a GmbH and the additionally required transfer/assignment of such shares) must be notarised.

An agreement which lacks the required notarial form will itself

become valid through subsequent valid performance, e.g. where the change of ownership is actually entered in the land register or the transfer assignment of shares is notarised even if the contractual obligation to assign lacked the notarisation.

### Codified law

The basic structures of typical contracts (sale, construction, services etc.) are prescribed by law. In contrast to English law, a contract under German law requires no detailed provisions and definitions on issues such as right of retention, set-off or assignment, as these have already been provided by the legislator. Unless the contract expressly stipulates otherwise, the statutory provisions will apply. German contracts of sale are, therefore, considerably more concise than comparable contracts under English law, saving the parties valuable time and substantial legal fees.

The United Nations Convention on Contracts for the International Sale of Goods (CISG), which has been ratified by almost all major industrial and commercial nations, applies to international contracts for the sale of goods. The UN Sales Convention is strongly influenced by Continental European and particularly German legal principles and,



disposing of the insolvency assets at this stage. There is one exception to this rule, which is the self-management procedure (Eigenverwaltung). This procedure has been used in large corporate insolvency proceedings, where it is very likely that the business will be restored to financial soundness without the need to exchange management.

If the preconditions for opening the insolvency proceeding are met, the insolvency court will open the insolvency proceedings by a formal order and appoint an insolvency administrator. If the conditions are not met or if the debtors remaining assets are not sufficient to cover the costs of the proceedings, the insolvency court will deny the opening of proceedings by a formal order.

### Living in Germany

Germany offers innumerable advantages for a pleasant life, but is certainly no low budget country. Its education system, however, provides free compulsory schooling for children of any national providence, a model dual professional education (parallel intra-company training and public schooling) and renowned universities. You will find a high grade of emancipation in the professional world and old-age provisions are given. Language training programs for newcomers and a variety of leisure time activities in clubs help to get in contact with the neighbourhood. The average German has been trained all his life to be efficient and target-oriented and will also use his leisure time for some activity, but you will find him as well relaxing in a beer garden on a summer evening or enjoying a good wine by the open fire place in winter time. Despite their reputation of being narrow-minded and humourless, Germans are helpful and friendly people, but are often quite timid to take the first step. So, do not be shy to take it yourself.

## 3. Taxation

### 3.1. Taxation of representation offices and branches

#### Representative office

Whilst under German law there is no such thing as a representation office, such business operations in Germany may be carried out either by an external self-employed person (e.g. a commercial representative) or as a part of the foreign company's own business organisation in Germany.

The German tax authorities will decide whether the activity is a permanent establishment within the meaning of the German general tax code or the applicable Double Taxation Agreement, or not. In order to avoid a permanent establishment one should not have a fixed place of business or plant in Germany that has a certain degree of organisational and effective independence or is for more than merely a temporary purpose.

In case the office is not considered as a permanent establishment it will not be liable to taxes on income in Germany. Profits and losses will be included in the books and financial statements of the foreign entity in its home country. Nevertheless, the German activities might be liable to

VAT, payroll tax, social security contributions (for employers and employees) or income tax (for employees working in Germany).

We recommend to have checked beforehand if the goods you wish to deliver or the services you wish to provide in Germany are liable to German VAT. Even if not, German input VAT might be refundable under certain conditions and within tight time limits after year end.

Should there be employees working in Germany, the foreign company is obligated to register as employer in Germany and withhold social security contributions and sometimes also payroll tax from the gross monthly salary including any other non-cash taxable benefits (e.g. company car, company flat, insurance contributions, stock options, free meals), and to report and remit this tax to the German tax office, starting from the first day of its activity in Germany. In this case, the employees will normally also be treated as being resident in Germany for income taxation purposes whilst they work in Germany.

VAT Reg. number of clients in other EU member states which can be done on the website of the European Commission with the following link:

[http://ec.europa.eu/taxation\\_customs/vies/vieshome.do?.select\\_dlanguage=DE](http://ec.europa.eu/taxation_customs/vies/vieshome.do?.select_dlanguage=DE)

- Bookkeeping should be done on a regular base because companies have to report the results periodically to the tax authorities and audits may happen at any time.

#### Due Dates

- Reports from the books or payments are due at the following times:
- Announcements to the social security carriers: five bank working days before end of month
- Payments to the social security carriers: three bank working days before end of month
- Wage tax declarations: 10<sup>th</sup> following the end of the month
- VAT statements: 10<sup>th</sup> following the end of the month, quarter or year

- Recapitulative statement (RS) on intra-community supplies of goods and deliveries: 25<sup>th</sup> following the end of the month, quarter or year

#### Record retention periods

Books and accounting related documents, inventories, annual financial statements, management reports and all bookkeeping items, including all received and outgoing invoices, have to be stored for 10 years. Other documents like business letters and emails received or sent have to be stored for 6 years. All deadlines start at the end of the calendar year in which the last entry has been performed.

#### ⇒ Expert advice

Performing bookkeeping of a German entity abroad can be very risky. Foreign accountants do usually not follow permanent changes in German tax or commercial law, so compliance with German rules cannot be ensured. Especially newly established companies are observed profoundly by the German authorities and should take the regulations very serious to save time, money and reputation.

## 4.2. Annual financial statements

### Obligations

All businessmen have to prepare annual financial statements according to German GAAP. Corporations and partnerships without natural persons as partner with unlimited liability have to follow additional rules for preparation of annual financial statements, which for them comprise of a balance sheet, a profit and loss statement and an annex. Medium-sized and large corporations have to prepare a management report, too. Moreover in many cases a separate tax balance sheet has to be

prepared for the fiscal authorities, which is often not equal to the commercial balance-sheet.

### Classification

Corporations and commercial partnerships are classified into small, medium-sized and large companies. Many obligations and due dates depend on the size classification of corporations and partnerships: A corporation is classified as small, medium-sized or large if at least two of the three criteria shown below are met in two successive financial years:

	Small corporations	Medium-sized corporations	Large corporations
<b>Total assets Euros million</b>	≤ 4,840	4,840 to ≤ 19,250	> 19,250
<b>Sales Euros million</b>	≤ 9,680	9,680 to ≤ 38,500	> 38,500
<b>Average number of employees</b>	≤ 50	50 to ≤ 250	> 250

### Due Dates

Annual financial statements have to be prepared within 3 months after

balance-sheet date. For small corporations the deadline is 6 months. However, if financial