



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Germany



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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GERMANY



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FORM OF ENTITY

GmbH – limited liability company

The GmbH is a company for all kinds of business with a corporate organization and its own legal personality. The shareholders have the possibility to control the company by instructing the managing directors. It has a share capital, which matches the total sum of the share contributions to be made by the shareholders. Only the company is liable to creditors for corporate debts. The legal frame allows individual formation to a certain extent.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Partnerships

GbR (*Gesellschaft bürgerlichen Rechts*), oHG (*Offene Handelsgesellschaft*), KG (*Kommanditgesellschaft*), GmbH & Co. KG

- Require no minimum share capital and
- At least 1 partner is personally unlimited liable.

Corporations

GmbH (*Gesellschaft mit beschränkter Haftung*) – Limited Liability Company:

- 1 or more shareholders
- EUR25,000 minimum share capital

- Liability limited to share capital
- Most popular legal form in Germany and
- Individual formation possible due to only few mandatory provisions.

UG (*Unternehmergeellschaft haftungsbeschränkt*) – Limited Liability Entrepreneurial Company:

- 1 or more shareholders
- EUR1 minimum share capital
- Liability limited to share capital and
- Strict requirements to accumulate yearly earnings.

AG (*Aktiengesellschaft*) – Stock Corporation:

- 1 or more shareholders
- EUR50,000 minimum share capital
- Liability limited to stock capital
- Generally addresses a larger number shareholders and
- Stocks fungible and can be traded at the stock markets.

KGaA (*Kommanditgesellschaft auf Aktien*) – Partnership limited by Shares:

- 2 partners or more: at least 1 as general partner and 1 as limited partner
- EUR50,000 minimum share capital
- General partner is personally liable without limitation (but a limited liability partner can be the general company) and
- Limited partner's liability is limited to his share.

MINIMUM CAPITAL REQUIREMENT

GmbH – limited liability company

There is a minimum of EUR25,000.

LEGAL LIABILITY

GmbH – limited liability company

Shareholders are not liable to creditors if the share contribution has been paid unless in exceptional cases of an intervention which destroyed the very existence of the company (*existenzvernichtender Eingriff*) or similar circumstances.

TAX PRESENCE

GmbH – limited liability company

A GmbH is usually taxed on 2 levels:

- Firstly, it is subject to corporate income tax (*Körperschaftsteuer*).
- On the second level, a GmbH is subject to trade tax (*Gewerbesteuer*), which is imposed by local municipalities (ie, the town or city where the company is based).

Companies are obliged to add value-added tax (VAT – *Mehrwertsteuer*) to the prices of their goods or services and to invoice their customers accordingly.

INCORPORATION PROCESS

GmbH – limited liability company

Notarial certification for the articles of association (which may also take place through online notarization) to be filed with the local commercial register (*Handelsregister*).

BUSINESS RECOGNITION

GmbH – limited liability company

Most popular legal form in Germany. However, some people might feel more secure contracting with bigger companies, especially stock companies (AG) or smaller companies where the partners are subject to personal liability.

SHAREHOLDER MEETING REQUIREMENTS

GmbH – limited liability company

Generally, a written invitation by the managing directors (including the necessary information) is used. Requirements are set out in the German Limited Liability Company Act (GmbHG) and/or in the articles of association. If all shareholders agree, written shareholders' resolution instead of physical meeting is possible.

At least 1 shareholder meeting each year to agree on accounts.

BOARD OF DIRECTOR MEETING REQUIREMENTS

GmbH – limited liability company

Requirements depend on the respective articles of association.

ANNUAL COMPANY TAX RETURNS

GmbH – limited liability company

Must file tax returns annually for corporate income, trade and value added tax with the competent tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

GmbH – limited liability company

Both initial registration, as well as annual filings can be necessary. Germany recently implemented the transparency register by an amendment of its Money Laundering Act with effect as of June 27, 2017. Companies such as GmbH, AG, KG and KGaA have to submit to the transparency register specific information about their beneficial owner if a natural person directly or indirectly (with a multi-level participation structure) holds more than 25 percent of the capital or voting shares or exercises control in a comparable manner.

With another amendment of the Money Laundering Act with effect as of August 1, 2021, such a filing with the transparency register is required in any case where the 25 percent threshold is triggered, regardless of whether or not the same information can already be retrieved from the German commercial register or any other public register.

If no shareholder holds more than 25 percent of the capital or voting shares or exercises control in a comparable manner, the managing directors of the company need to be registered with the transparency register instead.

BUSINESS EXPANSION

GmbH – limited liability company

No need to change as business expands. It is also possible to open up branches of a German entity in order to expand in Germany. There are 2 groups:

- Independent branch (*selbständige Zweigniederlassung*) and
- Dependent office/site (*unselbständige Zweigniederlassung*).

The main distinctive feature is the dependency on the head office company. Whereas the independent branch engages in business activities independently (ie, a spatial and organizational separation, independent participation in the course of business, own management with the required proxies, separate accounting and separate business assets), the dependent office/site can make out invoices only in the name of the head office company. As a consequence, while the independent branch is required to register, the dependent office/site 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 competent local trade office (*Gewerbe-/Ordnungsamt*). Both groups are not separate legal entities.

EXIT STRATEGY

GmbH – limited liability company

The dissolution resolution by the shareholders starts the liquidation proceedings. The liquidation process takes at least 1 year. At the end of the liquidation process there is the ending and deletion of the company in the commercial register.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

GmbH – limited liability company

Annual accounts have to be filed with the German Federal Gazette (*Bundesanzeiger*).

The auditing of the annual financial statements is mandatory for large and medium-sized GmbHs in accordance with German Commercial Law.

DIRECTOR / OFFICER REQUIREMENTS

GmbH – limited liability company

Managing directors are required (at least 1).

A supervisory board is optional, unless the Company is subject to co-determination (500 employees and above), then, the supervisory board is mandatory.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

LOCAL CORPORATE SECRETARY REQUIREMENT

GmbH – limited liability company

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

GmbH – limited liability company

None.

LOCAL OFFICE LEASE REQUIREMENT

GmbH – limited liability company

Filing for incorporation requires an office in Germany. A lease is not required, however, a full postal address suitable for formal service of documents must be given. The actual location of the administrative headquarter can differ and therefore be in a foreign country as well (this however may have tax consequences and therefore should be carefully assessed).

OTHER PHYSICAL PRESENCE REQUIREMENTS

GmbH – limited liability company

None.

SUFFICIENCY OF VIRTUAL OFFICE

GmbH – limited liability company

Yes, generally possible. However, you still need a registered office address.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

GmbH – limited liability company

Yes, but should be only an interim solution as this bears the risk of not having enough "substance" from a tax perspective. However, in the recent past some commercial register judges have refused to register an address of a law firm. Therefore, it might not be possible to register in the future with an address of a law firm or 3rd-party provider.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

GmbH – limited liability company

No local directors required as long as it is ensured that the director(s) is/are able to operate and manage the business of the GmbH primarily from Germany. Having only managing directors appointed with a residence outside of Germany may however have negative tax impacts and therefore should be assessed carefully.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

GmbH – limited liability company

None as long as they can easily enter Germany (or obtain easily a Visa).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

GmbH – limited liability company

None with respect to the shareholders.

Directors must meet certain requirements under the German Limited Liability Company Act (*GmbHG*).

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

GmbH – limited liability company

The shareholders' meeting is the highest corporate body. It can issue binding instructions to the directors to carry out certain actions, decide on rules of procedure and/or the basic direction of the business. To the extent legally permissible the articles of association can define the authority and the limitations (i.e. there needs to be a core competency for the managing directors). A number of actions are mandatory managing directors' responsibilities (such as filing for insolvency).

The managing directors represent the company vis-à-vis 3rd parties and run the company. Their power of attorney has unlimited external legal effect, and, thus, even binds the company if internal restrictions of their representational powers have been violated.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

GmbH – limited liability company

The commercial register contains a list of the shareholders.

The managing director is listed in the commercial register as well.

Disclosure of (ultimate) beneficial owner vis-à-vis to the transparency register necessary, if a natural person directly or indirectly (with a multi-level participation structure) holds more than 25 percent of the capital or voting shares or exercises control in a comparable manner. If no shareholder holds more than 25 percent of the capital or voting shares or exercises control in a comparable manner, the managing directors of the company need to be registered with the transparency register instead.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

GmbH – limited liability company

1 shareholder.

1 director, who can be the only shareholder (managing shareholder).

No maximum numbers.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

GmbH – limited liability company

1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

GmbH – limited liability company

The shareholders resolve on the appointment of the managing directors.

The removal of a managing director is possible at any time and without notice by the executive organ stated in the statutes. Removal must be filed for entry in the commercial register.

Please note that German law distinguishes between the position as managing director and the contractual relationship based on the service agreement. The termination of the service agreement is subject to the agreed notice period.

REQUIRED AND OPTIONAL OFFICERS

GmbH – limited liability company

None.

BOARD MEETING REQUIREMENTS

GmbH – limited liability company

There is no statutory requirement to have board meetings.

Requirements depend on the respective articles of association.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

GmbH – limited liability company

There are no statutory quorum requirements for shareholder and board meetings.

Requirements can be regulated in articles of association.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

GmbH – limited liability company

The share capital must be paid to an account of the company to be established. It is possible to use a foreign bank account.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

GmbH – limited liability company

The GmbH is obliged to prepare financial statements. It is obliged to draw up a balance sheet (annual balance sheet) and a profit and loss account at the end of every fiscal year. In addition, the annual financial statements are to be extended by notes with explanations. They must be drawn up in the German language. Auditing of the annual financial statements is mandatory for large and medium-sized limited liability companies.

There is no statutory rule where the books have to be kept.

REQUIREMENT REGARDING PAR VALUE OF STOCK

GmbH – limited liability company

The registered nominal amount must be at least EUR 1 per share and – in case of a higher amount per share – must be a full Euro amount.

INCREASING OF CAPITALIZATION IF NEEDED

GmbH – limited liability company

Effected by amending the articles of association, which requires a notarized shareholders' resolution. Capital increase only becomes legally valid upon registration with the commercial register.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

GmbH – limited liability company

Funds can be repatriated abroad from Germany via profit withdrawal in accordance with the relevant tax provisions.

No exchange control exists.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

GmbH – limited liability company

Shares are generally transferable. However, the articles of association can restrict the transfer (ie, by implementing approval requirements).

OBTAINING A NAME AND NAMING REQUIREMENTS

GmbH – limited liability company

The name must be distinct and must show the legal form (GmbH).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

GmbH – limited liability company

The German "Know Your Client" requirements are based on the European provisions.

Most common applicable law is the Anti-Money Laundering Act (*Geldwäschegesetz*), pursuant to which transactions are subject to different identification and reporting requirements, with penalties resulting from non-compliance. These vary from simple proof of identification (for individuals) or a physical/electronic record of the company, to simple or enhanced due diligence, depending on the risk. For example, Politically Exposed Persons (PEPs) are always subject to an enhanced due diligence process.

The reporting is made to the Criminal Investigation Department of the relevant state and to the central Criminal Investigation Department of Germany (Central Division for Suspicious Activity Reports (Financial Intelligence Unit FIU)).

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

GmbH – limited liability company

The shareholders resolve on amendments. The resolution must have a majority of 3/4 of the votes cast. The articles of association can provide additional approval requirements. The resolution needs to be notarized.

Amended articles of association need to be filed with the commercial register.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

GmbH – limited liability company

Before starting their business operations, all business operators must inform the trade office (*Gewerbe/Ordnungsamt*) of the town or local district in which the business operation is located. In some additional sectors, business licenses are necessary (*ie*, pharmacies, property developers, real estate agents, brokers, security firms, pubs and hotels and banks).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

GmbH – limited liability company

The purchase of a shelf company is feasible and requires a share purchase agreement. After the purchase of the company and its application for registration with the commercial register, you may take up business.

KEY CONTACTS



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