



Doing Business in Germany

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About ACCONSIS

ACCONSIS is an independent accounting, auditing and law firm located in Munich with more than 100 employees.

For many years we have successfully provided services to clients who are both part-time and full-time residents of Germany.

We are a member firm of Allinial Global (allinialglobal.com), the second largest association of independent accounting firms in the world. In addition we cooperate with Unija for the region Central Europe. Our expertise is therefore complemented by the expertise of more than 31,000 professionals in 85 countries, which makes us the ideal partner for foreign companies with branches or subsidiaries in Germany as well as for German companies with international business.

Our capabilities span across international incorporations to private client services as well as fund administration. ACCONSIS covers the following areas:

- Annual Compliance
- Corporate legal & labor law
- Financial Accounting
- Financial Administration
- Global HR Solutions
- Payroll Accounting





Introduction to Germany

Why Do Business in Germany?

The strongest economy in Europe

Germany is the largest economy in Europe and the fourth largest in the world (if calculated by GDP). It is also an „expert powerhouse“ - reportedly the third largest in the world in 2019 with USD 1.5 billion worth of goods and services exported. In that same year, Germany recorded a trade surplus worth USD 254 billion, the second highest in the world. Among the top 10 biggest economies in the world, Germany is the only country with a stable Triple-A (AAA) credit rating. The „Made in Germany“ label - which includes leading brands such as Adidas, Allianz, Audi, BASF, Bayer, BMW, Deutsche Telekom, Mercedes-Benz, Metro, Nivea, Porsche, SAP, Siemens, and Volkswagen – inspires confidence and trust in product and services. For all these reasons and more, Germany is one of the top investment destinations.*

Like other countries, Germany was hit hard by the COVID-19 pandemic. So far, over 2 million cases were reported in a population of 83 million, and shops, offices and factories shut their doors for months. As a result, consumer spending, imports and exports declined sharply across the board. However, employment in Germany has not contracted to nearly the degree it has in many other countries, providing the country with an unusual level of economic stability with which to weather the crisis. Germany's effective pandemic response, when viewed in combination with other factors, may make the country an even more attractive choice for foreign investment.

Reliable and sophisticated legal system

The German legal system is well organised, efficient, and impartial. For foreign investors, a clear and reliable legal system is a very important factor in deciding where to invest. Arbitration is very well recognised as a method of dispute resolution, giving parties maximum flexibility in deciding upon methods of dispute resolution without getting into time consuming court proceedings.

Readily available, highly qualified staff

Combined with leading universities and research institutes, approximately 80 % of the German population have received a university entrance level education, or possess a recognised vocational qualification - above the Organisation for Economic Co-operation and Development (OECD) average of approximately 65%. This means highly qualified resources are readily available.

Top infrastructure

Located at the heart of Europe, Germany is Europe's number one logistics market. A sophisticated energy and communications infrastructure as well as first-class transportation networks ensure on-time delivery and short roads to success. Germany is the world's top location for trade fairs; around two thirds of the world's leading trade fairs take place in Germany. The largest annual international trade fairs and congresses are held in German cities such as Hanover, Munich, Frankfurt and Berlin.



The challenges of Doing Business in Germany

While Germany is a highly favourable investment destination, new investors may sometimes encounter some road bumps.

Language

The main language of communication in Germany is German. Even though English is widely used (especially in larger cities such as Frankfurt and Munich), all government communications are carried out in German.

The language barrier remains a tough one for international corporations and personnel to overcome.

Complicated taxation system

Germany has a complicated taxation system combined with strict enforcement mechanisms; therefore foreign investors often grapple with trying to understand the taxation system. Luckily, there are numerous qualified tax advisors who can assist.

Relatively expensive labour market

While Germany has a large pool of highly trained individuals, labour can be relatively expensive in Germany. In addition, there are several statutory benefits which employees enjoy, for instance a stipulated number of holidays.





Business Environment in Germany

Legal Entities in Germany

The first step to setting up a business in Germany is to decide on the legal entity of the business. The most popular business entities are:

- **GmbH** (Gesellschaft mit beschränkter Haftung)
- **AG** (Aktiengesellschaft)
- **Branch** (Betriebsstätte)
- **GmbH & Co. KG** (Kommanditgesellschaft mit beschränkter Haftung)

GmbH

Foreign investors in Germany often opt for a German limited liability company (GmbH), as the formalities involved in the incorporation (or acquisition) of such entities are minimal and the GmbH offers a flexible internal structure that can be tailored to investor's needs.

A GmbH is a fully independent legal entity with essentially two executive parties - the managing director(s) and the shareholder(s).

Shareholders and share capital

No minimum or maximum number of shareholders is prescribed, and as a result, formation of a „one-man GmbH“ is possible. The founding shareholders of a GmbH may be German, foreign individuals, or corporate entities.

The minimum share capital as stipulated under the law is EUR 25,000. The share contributions can be provided in cash or in the form of contributions.

The application for entry in the commercial register may not be made unless the capital contributions have reached at least half of the minimum nominal capital, i.e. EUR 12,500 in case of more than two shareholders.

Appointment of managing directors (Geschäftsführer)

The shareholders appoint one or more managing directors, or a shareholder(s) can also be appointed as managing director (managing shareholder). A German or a foreigner permanently residing abroad can become a managing director.

Managing directors are appointed by a resolution passed by the shareholders, but the appointment can be revoked at any time. The names of managing directors are recorded in the Register of Commerce along with certain personal information. Therefore, the Register of Commerce must be notified of any changes in directorship. A managing director is not required to have any specific qualifications unless the GmbH will be active in a regulated business. In cases where a GmbH has 2,000 employees or more, a second director must be appointed as a „labour director“ with special responsibilities for all employment matters.

Managing directors of a GmbH may either meet informally and make decisions collectively, or make them on their sole responsibility as determined in standing procedures established by the shareholders. Often the directors are individually responsible for specified fields under the overall control of a senior director or general manager.

The main steps for the formation of a GmbH

Notarisation of the articles of association

Once the articles of association are drafted and finalized, they must be notarised. When the articles of association of the GmbH are recorded, founding shareholders must prove their identity by presenting valid identity papers to the notary public.

The notarial deed can be executed by any person duly authorised on the shareholders' behalf. Such authorization requires a power of attorney for this purpose, signed by shareholder(s) or their authorized representatives.

The signature on the power of attorney must be authenticated by a notary. If the authentication is carried out by a foreign notary, the foreign notary will require the necessary official recognition of the authentication or where applicable an Apostille under the Hague Convention. The former can be granted by a Consul of the Federal Republic of Germany. If the power of attorney is signed by authorised representatives, evidence of their authorisation must be proven. If a legal entity is one of the founding shareholders, its existence must be proven.

Registration of the GmbH in the commercial register

To become an official legal entity, the GmbH must be registered in the commercial register. In order to obtain such registration, the managing directors must file a formal application

(Handelsregisteranmeldung) to the competent local court of the company's registered seat where the commercial register is kept. The application for registration must contain the following documents as attachments:

- Notarial deed of formation and articles of association
- Powers of attorney for the persons acting, if applicable
- List of shareholders signed by the managing director(s) and in the event of provision of contributions in kind, the report on the foundation by contributions in kind, and documents on the valence of the contributions in kind
- An assurance that the necessary minimum payments of the share contributions have been made and are at the free disposal of the managing director(s)
- The electronic transmission of all documents to the local court (commercial register) is carried out by a notary. The entries in the commercial register are published in the electronic Federal Gazette (elektronischer Bundesanzeiger).

The GmbH comes into existence with the registration.



AG

A public limited company (AG) generally enjoys a high market reputation among business partners. However, the founding formalities and costs of an AG are relatively high, and the AG is subject to extensive organisational obligations in day-to-day business.

There are two founding obligations to be observed. First, an AG must have a minimum share capital of EUR 50,000 (which must be fully subscribed by the founding shareholders) and second, articles of association need to be certified by a notary.

The founding shareholders appoint the first auditor (Abschlussprüfer) and supervisory board (Aufsichtsrat), which in turn appoint the first management board (Vorstand). The appointment of the first auditor and supervisory board must be notarised, and the founding shareholders are also required to prepare a formation report with the relevant details on the establishment of the AG.

The AG is managed by its management board. Neither supervisory board nor shareholders can exercise direct influence on the board.

The AG comes into existence upon registration in the commercial register. The application must be signed by the founding shareholders, the member of the supervisory board, and the management board before a notary. In addition, an AG must be registered with the local trade office.

Shareholders meetings are generally called by the directors. The shareholders of an AG may vote on the resolutions tabled at shareholders meeting and may under certain circumstances and under due periods of notice, propose resolutions of their own.

Branch

Any foreign company with a head office and a registered business operations outside of Germany can establish:

- Dependent branch (operating facility)
- Independent branch (branch establishment)

A branch is represented by a manager (permanent representative).

Dependent branch (Betriebsstätte)

A dependent branch is dependent on the headquarters in every regard and is not entered in the German Register of Commerce (Handelsregister). Consequently, the letterhead of such a branch mentions the information of the foreign parent. However, each dependent branch, as an operating facility, must be registered with the relevant trade office in Germany.

Independent branch (Zweigniederlassung)

An independent branch is not a separate independent legal entity; it is organisationally a part of the of the enterprise of headquarters and branch establishment has been set up by a foreign enterprise. Internal constitution is based on the corporate statutes and competent foreign law. Despite internal dependence on the headquarters, it participates in trading activities independently.

The legal relationship of the branch establishment to its clients is subject to the German law. Only a commercial enterprise may set up an independent branch establishment. Therefore, for a branch establishment, both the business

registration and an entry in the Register of Commerce are necessary.

The formation of a branch office

The following is an overview of the steps usually taken when setting up a branch in Germany:

- A board resolution of the company setting up the branch is passed and the relevant Register of Commerce is notified of the same. Necessary steps suggested by the specific Register of Commerce must be completed.
- The German branch establishment is registered at the Register Court of the headquarters. The application to the Register of Commerce for an independent branch establishment of a foreign enterprise is to be done by the responsible executive organs.
- A business must be notified to the Trades Office of the borough in question for the branch establishment.

The control of business activity is based on the law of the headquarters and thus, if applicable, on the foreign law of the headquarters. Accounting balance sheets however, are subject to German law. A branch office is subject to taxation in Germany if it is considered to be a permanent establishment. An independent branch office is generally regarded as a permanent establishment, whereas a dependent brand office is considered a permanent establishment under certain conditions only.

KG I GmbH & Co. KG

The limited partnership (KG) provides a certain limit to liability compared to a general partnership. It has at least one partner with unlimited liability (general partner; Komplementär) and at least one limited partner (Kommanditist) whose liability is limited to the respective investment in the partnership's capital. Only the general partners are entitled to manage the company; the limited partners have no representation power externally.

The GmbH & Co. KG is a limited partnership with a limited liability company (GmbH) as the

general partner. This hybrid form is suitable for founders wishing to limit their liability while enjoying the flexibility of a partnership.

In line with the formalities of the KG, the GmbH & Co KG is established by conclusion of a partnership agreement, and it must be entered in the commercial register.

In a GmbH & Co. KG, the company is represented by the GmbH as their general partner. The GmbH its part is represented by its managing director(s).



Taxation

It is believed that up to 70 % of the world's literature on taxation is in German. This anecdote provides an insight into how complicated the German tax system is. Below is a short summary on taxes which may be relevant for businesses in Germany.

German taxation is based on various statutes of the parliament. Each tax is governed by its own act, these include the Corporation Tax Act (Körperschaftsteuergesetz), Trade Tax Act (Gewerbesteuerengesetz), Income Tax Act (Einkommensteuergesetz), and Value Added Tax (VAT) Act (Umsatzsteuergesetz), among others.

These acts, such as the Reorganisation Tax Act (Umwandlungssteuergesetz) or the Foreign Tax Act (Außensteuergesetz) regulate the tax consequences of a specific type of transaction or set of circumstances.

These are linked by the German Tax Code (Abgabenordnung) that regulates reporting, filing, assessment, and appeal procedures common to all, or nearly all taxes.

GmbH and AG type of companies are subject to corporate income tax and the solidarity surcharge on profits generated worldwide. Dividends that have been generated and taxed abroad may be exempt from taxation in Germany, or alternatively taxes paid in a foreign country can be offset against taxation in Germany. Companies that are not based in Germany or those that do not have an executive board in Germany are liable to only corporate income tax on

income generated inside Germany (e.g via a permanent establishment, dividends, or licenses).

The partners of a KG of GmbH & Co. KG are subject to either corporate or personal income taxation.

Every company or branch has to register with the local tax authority in order to be issued with a tax number, which is required for corporate income taxation as well as national German VAT purposes. A tax assessment questionnaire must be completed before a tax number is issued. Where the company intends to deliver or import goods to or from other EU member states, it will require a VAT identification number issued by the Federal Central Tax Office. The VAT identification number application can be filed online or can even be combined with the application for a regular tax number.

Corporate income taxation

Taxable income (i.e. annual business profit) forms the tax base for corporate income tax. The corporate income tax rate is 15 % of the taxable income and the solidarity surcharge is 5.5 % of the corporate tax payable (a total of 15.825 %).

In addition, companies are also liable to pay trade tax, which is levied by the municipalities and varies between 7 % to 18 % (no solidarity surcharge is payable on trade tax).

Therefore, the aggregate tax rate ranges from 23 % to 34 %.



Taxation of dividends

If a German subsidiary company distributes profits to its foreign parent corporation (dividend payment), a general withholding tax (Kapitalertragssteuer) of 25 % plus solidarity surcharge is payable in Germany. In the event of the existence of a double taxation agreement (DTA) with another country, the withholding tax is usually levied at a significantly lower rate, e.g. 5, 10, or 15 %.

Withholding tax still paid in Germany can be credited against existing foreign tax obligations. Parent company will be exempt from dividend-payable tax in the respective DTA state.

The double taxation agreement with the United States, for example, allows a reduction of dividend taxation to 0 % where certain requirements are met. Moreover, EU law, under certain conditions, allows tax free transfer of dividends between all EU member states.

Value added tax (VAT)

VAT is a tax on the exchange of goods and services. Companies are generally obliged to add VAT to the prices of their goods or services and to invoice their customers accordingly. In specific business-to-business transactions, the business client himself has to transfer the VAT to the tax authority, commonly referred to as a „reverse charge“ procedure. 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 in these cases, the commercial customer has to pay VAT in his EU member state (intra-Community acquisition).

The 19 % VAT rate in Germany is below the European average. A reduced rate of 7 % 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, or community work are completely VAT exempt. VAT which is collected has to be paid to the responsible tax office on a monthly, quarterly, or credited on annual basis. The exact time frame depends on the company's level of turnover. Companies themselves regularly pay VAT when they purchase goods or services. The taxes collected and paid can be balanced out in the VAT return as input VAT deduction (Vorsteuerabzug). In regards to companies, VAT only represents a transitory item.

Personal income tax

Personal income tax is imposed on the income of individuals who are German residents. All the income earned at home and abroad is subject to German tax.

A foreign resident, who is employed in Germany, pays tax only on income earned in Germany.

In Germany, the personal income tax rate rises progressively from 0 % to 45 %. As with corporate income tax, the solidarity surcharge is also added to personal income tax



Labour laws

Finding suitable staff

The availability of a highly trained workforce is one of the chief advantages of setting up business in Germany. The Federal Employment Agency (Bundesagentur für Arbeit) offers employee search facilities free of charge. In addition, there are also numerous private head hunters.

Terms of employment

Employment contract

A contract of employment setting out the terms and conditions of the employer-employee relationship is drawn up in writing, specifying „inter alia“, this includes:

- Date of appointment and notice periods
- Working hours
- Length of probation period and bonuses
- Leave entitlement
- Confidentiality or non-compete obligation

Salaries and wages

At present, the level of salaries or wages in Germany can generally be negotiated freely between the employer and employee, on the condition it adheres to stipulated minimum wages.

Working times

Under German labour law, employees are allowed to work 8 hours per day. This equates to 48 hours per week if working a 6 day week as Saturday is considered to be a normal working day. However, with a 5 day week, the permitted weekly working time totals 40 hours. Overtime

has to be compensated with additional time off. An overtime bonus is possible but it is not legally specified. Bonuses have to be paid only when required by individual contracts or collective labour agreements.

The statutory amount of work breaks depends on the total number of hours worked per day. Employees are entitled to a break of 30 minutes when working between 6 and 9 working hours per day. Employees are entitled to a 45 minute break where more than 9 hours are worked a day. Breaks may be split up throughout the day, but divisions may not be shorter than 15 minutes. Statutory breaks of at least 11 hours exist between shifts.

Vacation and public holidays

Full-time employees (meaning employees working more than 6 months within a calendar year) who work 6 days per week are entitled to a minimum of 24 paid vacation days (the equivalent of 4 weeks) per year. Accordingly, full-time employees who work 5 days per week are entitled to a minimum of 20 days per year. Employees are entitled to a pro-rated period of paid vacation when working for less than 6 months within a calendar year. During the typical 6 month probationary period at the beginning of any new employment contract, employees are not normally entitled to take any vacation days.

Sick leave

Employees are obliged to inform their employer about any sickness requiring an absence from work and the expected duration of this

absence as soon as possible (generally on the first of sick leave). Where the period of sick leave exceeds 3 days, employees are obliged to have a general practitioner provide proof of their incapacity to work. Notwithstanding this, employers may also request medical certification of an employee's incapacity to work beginning on the first day of sick leave. Employees are entitled to sick pay amounting to 100 % of the normal salary until the time of recovery, up to a maximum of 6 weeks.

Maternity leave

Female employees are also entitled to a maternity protection period starting 6 weeks before the expected birth date and ending 8 weeks after delivery. Pregnant employees are allowed to work during this time only if a doctor certifies that the work will not be harmful to the health of the mother and child. In cases of premature or multiple births, the employee is not obliged to return to work for a period of up to 12 weeks after delivery - without having to provide proof of medical necessity for this extended absence. During the maternity protection period, pregnant employees are entitled to the average sum of their wages for the 3 month (or 13 weeks) period prior to the pregnancy paid by the employee's public health insurance (or as stated for privately health insured employees) and the employer.

Termination of employment

A contract of employment can be terminated by the employer or the employee. Dismissals must

be in written form; electronic termination is not valid. Both the employer and employee have to observe the statutory notification periods. The German Employment Protection Act (Kündigungsschutzgesetz) establishes certain rules for dismissals, drawing distinctions between:

- Dismissal for personal reasons
- Dismissal for conduct-related reasons
- Dismissal for business reasons

The Employment Protection Act only applies to companies with a staff of more than 10 employees and with continuous employment relationships of more than 6 months in the same company.

Immediate termination of employment may be considered in cases of serious misconduct rendering it unacceptable for either party to continue the employment relationship. It is not enough that the termination is considered necessary, it must be immediately imperative. The legal period of notice does not apply in these cases.

Except in cases of extraordinary termination, it is necessary to abide by the notice period when terminating employment contracts.

Social security system

In Germany, employees belong to the national social security system by the law. The statutory social security system is regulated in the Social Security Code (Sozialgesetzbuch/SGB).

Social security contributions are made up of:

- Accident insurance
- Artist Social Security contributions
- Health insurance
- Nursing care insurance
- Pension insurance
- Unemployment insurance

These must be withheld from an employee's salary by the employer and paid to the respective institutions.

Generally, the employer and the employee will each pay half of the social security contributions, and employers must pay their share in addition to the salary based on the employee's gross salary with certain maximum amounts applied. Contributions to the employee accident insurance are made solely by employers. In total, the employer's share of social insurance contributions amounts to approximately 21 % of the employees gross wage with a cap once certain thresholds are reached (5,000-6,000 EUR gross salary per month).



Your Partner
in Germany



How ACCONSIS can help grow your Business in Germany

As you are reading our information brochure on Doing Business in Germany, it is likely that business is going well, and your company is ready to move beyond country borders. However, this overview is only a first point of orientation; the process of realising successful expansion overseas is much more complicated, and many challenges will come up along the way. Without the international experience and know-how, it is difficult to decide where to begin.

ACCONSIS's international expansion services in Germany

ACCONSIS has a deep understanding of the various essential and the most challenging aspects of issues that corporations face when starting up in an unfamiliar territory. With our local experience and expertise, we are well positioned to support our clients with their global growth. Therefore, we have developed a dedicated business unit „International Desk“ offering:

- Corporate legal & Compliance
- Finance & Accounting
- Global HR solutions & Labor law

Corporate legal & Compliance

If you are starting up a business abroad, you will have plenty to think about even without the burden of meeting the local legal requirements.

At ACCONSIS, we can take responsibility for the legal paperwork by setting up and monitoring your foreign entity, acting as company secretary, and fulfilling fiduciary roles. In addition,

ACCONSIS provides domiciliation services, making its premises available as a registered office address.

Corporate legal and compliance services include:

- Company incorporation
- Company governance
- Company secretarial

Finance & Accounting

When starting up business abroad, you want to apply the same high standards to the local administration that you would expect in the rest of your company, but you might not want to invest in staff or required systems. ACCONSIS International Desk offer the perfect solution.

From basic or complex accounting to reporting and cash management, ACCONSIS's experienced finance and accounting teams take care of all your back office needs.

We provide various financial accounting and record keeping services, which allows you to have online access all over the world; including issuing invoices, dealing with day-to-day accounting, customised financial reporting, and the preparation and filing of annual financial statements in line with the German Generally Accepted Accounting Principles and the International Financial Reporting Standards.



Global HR solutions & Labour law

Managing staff overseas might be both the most essential and challenging aspect of international expansion. You can get lost among the various rules and regulations between countries, different pension and benefits schemes, cultural differences, and many more local and international HR issues. Understanding the rules and implementing the proper procedures can take up a vast amount of time and effort that you probably cannot spare. This is where ACCONSIS can help.

We have excellent knowledge of local and international legislation and offer on-the-ground support in business jurisdictions around the world. Our teams of experts offer practical support in helping you in setting up and taking care of ongoing administration, and can help you with local requirements and customs.

With our support, you can be certain you are always in control of all aspects of your staff management abroad including:

- Employment agreement
- Employee benefits
- Employee mobility
- HR advisory support
- HR governance
- Payroll
- Share Plans
- and more

Your contact



„My recommendation:

We at ACCONSIS share a common goal to build trust and provide practical solutions for our clients. With ACCONSIS at your side, you will get the successful start in our country that you desire.”



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Acconsis

Verstehen. Gestalten. Bewahren.

Wirtschaftsprüfung
Steuerberatung
Rechtsberatung
Unternehmensberatung
Finanzierungsberatung

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Acconsis

Herzlich Willkommen!