



Setting up an Enterprise in Germany



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1 LEGAL FORMS OF COMPANIES

German law offers a variety of business forms, including sole proprietorships for individuals, several forms of partnerships (*Personengesellschaften*) and corporations (*Kapitalgesellschaften*) with limited liability. Foreign investors usually operate through corporate subsidiaries or German branches, some prefer to start through a representative office. The decision is generally determined by tax considerations.

BUSINESS ASSOCIATIONS

Partnerships (No Legal Entities):

- **OHG**
Offene Handelsgesellschaft
General partnership:
all partners with unlimited liability
- **KG**
Kommanditgesellschaft
Limited partnership:
one sole managing and unlimited partner with partners
of limited liability
- **GmbH & Co. KG**
Limited partnership:
sole general partner is a GmbH (limited liability company)

Corporations (Legal Entities):

- **GmbH**
Gesellschaft mit beschränkter Haftung
Limited liability company
- **Unternehmergesellschaft / UG (haftungsbeschränkt)**
Business company (with limited liability)
- **AG**
Aktiengesellschaft
Stock corporation
- **KGaA**
Kommanditgesellschaft auf Aktien
Limited partnership on shares:
corporation similar to a stock corporation.



Representative Office

Representative Offices, i.e. small branch offices, can be established without any formation formalities. They cannot trade or contract in their own name but mainly act in mere auxiliary matters on behalf of their parent corporations.

Branch Office

In contrast to a subsidiary, a branch (*Zweigniederlassung*) is not a separate legal entity distinct from the parent company. A branch may, however, be sufficiently self-supporting and able to operate independently. It must have its own office, bank account and bookkeeping. The branch manager has to be a senior executive to whom a general or full power of representation has been issued (*Prokurist*) or a general agent (*Handlungsbevollmächtigter*).

Each branch of this type has to be registered in the Commercial Register (*Handelsregister*) of the respective district's local court (*Amtsgericht*). If the branch is formed by a foreign corporation or other legal entity, a certified (*beglaubigt*) copy of the corporation's articles of incorporation together with a certified German translation thereof must be submitted to the commercial register. The application has to be duly notarized (*beurkundet*). All substantial changes with regard to the parent company must also be communicated to the commercial register of the branch (e.g. relocation, revocation of managing directors).

Sole Proprietorship

An individual may choose a sole proprietorship (*Einzelunternehmen*) as business organization. In this case, all his business property as well as his private property is subject to his liability for business debts. The registration of the sole proprietorship in the commercial register is mandatory.

General Partnership – OHG

A general partnership (*Offene Handelsgesellschaft*) is an association for business purposes consisting of two or more partners. In spite of the fact that a general partnership is no separate legal entity, it can perform its business activities in its own name. The liability of the partners, however, is not restricted but covers the business property as well as private property. The partners can be held liable jointly and separately. The profit and loss portion of each partner is laid down in the partnership agreement. The general partnership must be registered in the commercial register.

Limited Partnership – KG

A limited partnership (*Kommanditgesellschaft*) has at least one general partner and one or more limited partners. Whereas the liability of the general partner for business debts is not restricted, the liability of the limited partners is limited to their capital contribution mentioned in the commercial register. The restriction of liability becomes effective upon registration of the KG in the commercial register which is mandatory.



Stock Corporation – AG

The legal form of a stock corporation (*Aktiengesellschaft*) is normally used if it is intended to raise equity capital by going public and sell shares at the stock exchanges. The AG is formed by one or more persons who need not be resident in Germany. The articles of incorporation (*Satzung*) must be drawn up before a notary public. Upon incorporation, the founders must appoint the supervisory board (*Aufsichtsrat*), who in turn appoints the members of the management board (*Vorstand*). This also requires notarization. The members of the management and supervisory boards must be individuals (not necessarily German residents). They can be shareholders, but cannot simultaneously be members of the management and supervisory board. All AGs must be registered in the Commercial Register. Upon entry in the Commercial Register, the incorporation is completed and the AG comes into existence as a legal entity.

The minimum capital stock is 50,000 Euro. The amount of capital to be paid up before application for registration in the Commercial Register must be at least 25 % of the face value (*Nennwert*) of the shares issued. The capital must be paid in fully or a security given in respect of the outstanding amount if the AG is established by a sole shareholder.

The management board is empowered to decide all matters relating to routine business affairs and is responsible to the supervisory board. Shareholders exercise their power at the general meeting (*Hauptversammlung*) thus electing and dismissing their representatives within the supervisory board, deciding on the appropriation of profits and amendments to the articles of incorporation.

Limited Liability Company – GmbH

Since the legal validity of the Act to Modernise the Law Governing Limited Liability Companies (*MoMiG*) on 1 November 2008, the foundation of a GmbH has still been facilitated and accelerated and become more cost-saving. The new law provides for two GmbH variants: In addition to the long-established GmbH with a minimum share capital of 25.000 Euro, the so-called 'business company with limited liability' (*Unternehmergesellschaft [haftungsbeschränkt]* or *UG [haftungsbeschränkt]*) according to § 5a GmbH Act came into effect. The UG is not a separate legal form, but only a type of the GmbH without a given minimum share capital. The UG, however, may not distribute profits in full, but has to allocate 25 % of the annual net profit to the statutory reserve in order to accrue the minimum share capital of a standard GmbH by and by.

The foundation of a GmbH requires relatively few formalities by which it comes into existence as a legal entity. They have to be completed in due notarized form and can be summed up as follows:

- Conclusion of the articles of association (*Gesellschaftsvertrag*) by the shareholder(s)
- Appointment of the managing director(s) (*Geschäftsführer*) by the shareholder(s)
- Payment of the minimum company shares (*Geschäftsanteile*)
- Formal application (*Anmeldung*) for registration of the company in the commercial register
- Disclosure of certain data about the company

For uncomplicated standard foundations with at most three shareholders and one managing director, the notary public may use Model Articles (*Musterprotokolle*) comprising the articles of association, the appointment of the managing director and the list of shareholders.



Foundation documents are submitted in electronic form to the register court. After verification they are directly transferred to the electronically maintained commercial register. Since 2008 businesses which need approval (e.g. banking, insurance, transportation) are no longer bound to submit the corresponding license to the register court.

A GmbH may be formed by one or more shareholders (individuals, legal entities or partnerships). Where corporations or partnerships are intended to become shareholders in the German company, the following documents are required:

- Proof of the existence of the shareholding company (e.g. certified copy of an official commercial register)
- Proof of the authority of the natural persons acting for the shareholding company (e.g. certified copy of an official register showing that the acting persons are entitled to legally represent the company)

Where individuals are intended to become shareholders in the German company:

- Either the person appears before a German notary public there acting in its own name,
- or the person authorizes another person by a certified power of attorney.

The statutory seat (*Satzungssitz*) of a GmbH has to be in Germany, whereas the administrative seat (*Verwaltungssitz*) of the company may be abroad.

A GmbH is legally represented by one or more managing directors who must meet a limited range of requirements. Only natural persons with full legal capacity are eligible for this position. Persons convicted of certain criminal bankruptcy offences are not allowed to become managing directors for a period of five years from the date of their conviction. Corporate law does not require that any or all managing directors be German citizens. However, the managing director must either possess a German residence permit or, in case he/she does not intend to take up permanent residence in Germany, a multiple entry visa.

The appointment of a supervisory board (*Aufsichtsrat*) is only mandatory by law if a GmbH has more than 500 employees.

It takes a minimum share capital (*Stammkapital*) of 25,000 Euro to found a standard GmbH. Each shareholder has to take over a company share with a nominal amount of at least 1 Euro. One quarter of the share capital with a minimum of 12,500 Euro must be paid in on formation. Bank deposit receipts will only be demanded by the court in case of significant doubt whether the capital has been duly raised.

A corporation founded with a share capital less than 25,000 Euro is named 'Unternehmergeellschaft (haftungsbeschränkt)'. Notwithstanding the regulations for the GmbH, the registration of the UG (haftungsbeschränkt) can only be applied for if the share capital has been paid in full; any contribution in kind is excluded concerning the UG.



The registration in the commercial register requires a formal application to the court, filed by a notary public. The application has to be signed by all managing directors (signatures to be certified) and to contain certain information and affirmative warranties. After filing the application for registration, it takes approx. 10 days before the company is entered in the commercial register (central register portal: www.handelsregister.de). In well-founded cases of special urgency the handling time can even be further reduced. Upon registration the data of the new-established GmbH are published in the electronic German Federal Gazette (*elektronischer Bundesanzeiger* / www.ebundesanzeiger.de).

The foundation costs depend on the amount of the respective share capital. For a GmbH with a share capital of 25,000 Euro the notarial fees amount to approx. 450 Euro. For the foundation of a UG (haftungsbeschränkt) with a share capital of 100 Euro, the notarial fees account for approx. 60 Euro.

In order to ensure that all legal requirements are met and to avoid time loss, advice should be taken from a German lawyer or notary.

All business letters of a GmbH have to state the legal form, the statutory seat, the registration court and registration number, the names of all managing directors and, if the GmbH has appointed a supervisory board, the chairman of the supervisory board. On all business letters and order forms used by a foreign branch of a GmbH, the foreign company register and the registration number must be indicated.

Like any commercial trading company, a GmbH must keep proper written accounts which have to provide a realistic and accurate picture of the assets, financial position and profits of the company. An annual balance sheet and a profit & loss account must be drawn up at the end of every financial year. The annual financial statements have to be submitted in electronic form to the operator of the electronic German Federal Gazette who will publish the data and store them within the electronic Company Register (*Unternehmensregister* / www.unternehmensregister.de). The submission has to be made not later than 12 months after the end of the respective financial year (non-submission entails penalties) and involves the following documents:

Small companies (= do not exceed at least two of the following three features: € 4,840,000 balance sheet total, € 9,680,000 annual net sales, annual average of 50 employees) must submit summary balance sheets.

Medium-sized companies (= do not exceed at least two of the following three features: € 19,250,000 balance sheet total, € 38,500,000 annual net sales, 250 employees) must submit summary balance sheets, a summary profit & loss account and a situation report.

Large companies (= do exceed at least two of the above last-mentioned three features) must submit their entire annual accounts and a management report.

The annual financial statements of medium-sized and large companies must be audited by an independent auditor.

The above regulations refer as well to autonomous branch offices of foreign Limited companies.

A GmbH is considered insolvent when it cannot pay its debts or when the liabilities exceed the value of the assets. In this case of over-indebtedness (*Überschuldung*) the managing directors must file for insolvency with the local court within 3 weeks. Otherwise they may be held personally liable and subjected to criminal proceedings.



2 TAXATION

Germany has a complex tax system which comprises federal, state and municipal taxes. German taxes are often grouped into:

- Taxes on income
- Taxes on capital
- Taxes on transactions and on consumption (excise taxes)

The taxes on income are represented by the personal income tax (*Einkommensteuer*) levied on natural persons, sole proprietors and partners of a partnership, the corporate income tax (*Körperschaftsteuer*) on the profits of corporations, the capital gains tax (*Kapitalertragssteuer*) and the trade tax (*Gewerbesteuer*) on the business profit earned by any business regardless of its legal form. The personal and corporate income tax and the capital gains tax are supplemented by a surcharge, the so-called solidarity surcharge (*Solidaritätszuschlag*).

After the abolition of net assets tax and trade tax on capital towards the end of the last century, the real estate tax (*Grundsteuer*) is now the only significant remaining tax levied on business assets.

The transactions and excise taxes are often referred to as 'indirect taxes' and are represented first and foremost by the value added tax VAT (turnover tax / *Umsatzsteuer*), followed by excise taxes on fuel oil, tobacco, alcohol etc., insurance tax, and real estate transfer tax (*Grunderwerbssteuer*) levied on changes in ownership of property.

The Tax Management Act (*Abgabenordnung*) specifies that international obligations shall take precedence over domestic law. This refers to Germany's wide network of double tax treaties which are currently in force with nearly ninety countries.

Generally, residents of Germany are subject to tax on their worldwide income (unlimited tax liability / *unbeschränkte Steuerpflicht*). Individuals not resident in Germany are subject to tax only on income derived from German sources (limited tax liability / *beschränkte Steuerpflicht*). For tax purposes, individuals are considered to be resident in Germany if they have their domicile in the country or are present in Germany for a period of more than six months.

The most important taxes for individuals and foreign corporations investing in Germany are:

Personal Income Tax

Personal income tax is paid by natural persons, sole proprietors and partners of a partnership, providing their liability for income tax is unlimited.

The taxable income within one calendar year results from the total income minus certain personal expenses and a tax allowance (*Grundfreibetrag*) of € 8,004 for singles and € 16,009 for married taxpayers.

The progressive income tax, laid down in income tax tables (*Einkommensteuertabellen*), provides a minimum tax rate of 14 % for taxable incomes from € 8,005 p.a. for singles and € 16,010 p.a. for married taxpayers.

The maximum tax rate of 42 % is applicable from a taxable income of € 52,882 resp. € 105,764 p.a. For a taxable income of more than € 250,730 (singles) resp. € 501,461 (married taxpayers) p.a. the maximum tax rate rises to 45 %.



Corporate Income Tax

Corporate entities whose statutory or administrative seat is located in Germany are subject to corporate income tax on their global income. The tax rate is 15 %.

Capital Gains Tax

In 2009 the capital gains tax (*Kapitalertragssteuer*) has become a final withholding tax (*Abgeltungssteuer*) establishing a flat-rate tax of 25 % plus the solidarity surcharge on all capital gains (interest, dividends, investment) and proceeds from the sale of private capital assets (e.g. investment shares, participations in corporations). At the same time the former 'half-income procedure' regarding private capital gains has been abolished and taxes are now levied on 100 % of all dividends and speculation gains.

Solidarity Surcharge

In addition to the aforementioned tax rates, a solidarity surcharge of 5.5 % of the personal income tax, corporate income tax and capital gains tax is currently imposed on all taxpayers.

Trade Tax

The income of a company is additionally subject to a municipal trade tax which is calculated in a quite complicated way. By certain specific additions and subtractions the company profits are adjusted to the 'trade earnings'. 3.5 % of the trade earnings, being the 'tax multiplicand', are multiplied by the trade tax multiplier fixed by the local authority (Bremen 440 % / Bremerhaven 395 %). The resulting amount is the trade tax owed. From the tax year 2008 trade tax is no longer deductible as operating expenditure.

Sample Tax Computation for a Corporation	2010 / €
Profit before tax	100.00
Trade tax (at local rate of 440 %)	./. 15.40
Corporate income tax (15 %)	./. 15.00
Solidarity surcharge (5.5 % of the income tax amount)	./. 0.83
Profit after tax / gross dividend	68.77
Capital Gains Tax (<i>Abgeltungssteuer</i> 25 %)	./. 17.19
Solidarity surcharge (5.5 % of the tax amount)	./. 0.95
Net dividend received by shareholder	50.63



The following taxes affect individual earnings from employment:

Personal earnings are subject to income tax, solidarity surcharge, and, if applicable, church tax (*Kirchensteuer*, for members of the Roman Catholic, the Lutheran and the Reformed Protestant churches). The wage tax (*Lohnsteuer*) withheld from monthly wages and salaries by the employer, is to be seen as a prepayment of the personal income tax.

The income tax provides basic rates for single persons and lower 'splitting-rates' for married persons in case the spouse is also living in Germany. If the taxpayer has children, special tax allowances are granted to him. Monthly child benefits (€ 184 each for the first and second child, € 190 for the third child, € 215 for each additional child) will be paid upon application with the family department (*Familienkasse*) of the local employment agency (*Agentur für Arbeit*).

For a sample general tax calculation on individual earnings from employment, please refer to the table shown under 3 Social Security.

Other Taxes:

Value Added Tax: Goods and services supplied by a company are subject to turnover tax (VAT). Since January 2007, the VAT rate is 19 %. A reduced rate of 7 % applies in particular to food (except in restaurants), hotel overnight stays, books, flowers and certain services. The amount of turnover tax payable to the tax office is reduced by any amounts of turnover tax previously invoiced to the company by suppliers.

The import of goods into Germany is subject to a 19 % import turnover tax (*Einfuhrumsatzsteuer*) which is also deductible for companies and payable at customs. The export of goods is exempt from VAT.

Real Estate Tax: All domestic real estate is subject to real estate tax. The rate is fixed locally and generally lies within the range of 1 % to 2 % of the taxable value of the site which in most cases is significantly below the market value. The tax is payable in quarterly instalments and is deductible as business expense.

The **Real Estate Transfer Tax** arises in case of the sale or other transfer of land and buildings and is levied at 3.5 % of the purchase price.



3 SOCIAL SECURITY

The German social security system provides for

- Pension Insurance (*Rentenversicherung*)
- Statutory Health Insurance (*Gesetzliche Krankenversicherung*)
- Unemployment Insurance (*Arbeitslosenversicherung*)
- Care Insurance (*Pflegeversicherung*)
- Workmen's Compensation Insurance (*Unfallversicherung*)

In general, all employees working in Germany are subject to mandatory insurance, regardless of their citizenship or the residence of the employer. Apart from the workmen's compensation insurance which is borne in full by the employer, the contributions to the insurance are largely paid in equal amounts (exceptions see below) by employer and employee. Basis for the contributions are the employee's earnings. The employer's portion is not considered taxable income of the employee. The employer is liable for the total payment of the contributions to the social security institutions and has to withhold the employee's portion from wages or salaries.

Persons in marginal employment (*geringfügige Beschäftigung / Mini Job*) whose regular monthly salary is not exceeding € 400, are exempt from social security. However, the central registration office (*Minijob-Zentrale / www.minijob-zentrale.de*) has to be notified and the employer has to pay flat duties of normally 30 % of the salary (15 % pension insurance, 13 % health insurance, 2 % flat-rate tax). The health insurance duty is payable only for mini jobbers who are members of the statutory health insurance, but does not become due in case the employee has a private health insurance or doesn't have health insurance at all.

Employees temporarily delegated by a foreign employer to a German branch or subsidiary are in special cases exempt from German social security. In such case, the employee must be able to prove his/her intention to return to the home country and must remain on the foreign payroll, and the foreign employer must retain the crucial employer functions such as the determination of salary, promotion, transfer etc.

Pension Insurance: In 2010, combined employer- and employee contributions amount to 19.9 % of the employee's monthly gross earnings. The maximum insurable earnings amount to € 5,500 p.m. (€ 66,000 p.a.) in the western federal states, and to € 4,650 p.m. (€ 55,800 p.a.) in the eastern federal states. The maximum amounts are increased annually.

Under German law no pension payments are made to non-resident aliens. However, an expatriate leaving Germany may apply for a refund of the employee portion of the contributions made to the German pension scheme at any time two years after the last contributions were payable.



Health Insurance: With the introduction of the Health Fund in 2009, the financing of the statutory health insurance has been reorganized. Contributions and co-funding public money are centrally collected and transferred to the compulsory health insurance companies. The contribution rate is set by the German Government and presently amounts to 14.9 % of the monthly gross earnings, whereof employees pay 7.9 percentage points and employers 7.0 percentage points.

Statutory health insurance covers the employee and family members as long as those have no separate income. Benefits provided include medical and dental treatment, prescribed medicine, preventive examinations, maternity care, hospitalization and surgery. In addition to the monthly contribution, the following co-payments have to be made by the insured:

- € 10.00 quarterly practice fee on occasion of medical or dental treatment
- € 10.00 daily hospital fee (for maximal 28 days) on occasion of stationary treatment
- 10 % of the costs of prescription medicine (minimum € 5.00, maximum € 10.00)

Statutory insurance coverage is mandatory for employees up to a certain maximum amount of earnings which is currently € 4,162.50 p.m. (€ 49,950 p.a.). Employees earning more than the aforementioned maximum amount may voluntarily contribute to the state scheme or obtain coverage through Private Health Insurance. In general, they are then legally entitled to a tax-free reimbursement from the employer of 50 % on the premiums. Premiums of private health insurance are determined depending on age, gender, profession and state of health of the insured. Contrary to the statutory health insurance, a separate premium becomes due for every insured person.

Unemployment Insurance provides benefits in the case of termination of employment and part-time lay-offs due to a reduced level of production. In 2010, monthly contributions amount to 2.8 % of earnings up to € 5,500 p.m. (€ 66,000 p.a.) in the western federal states and to € 4,650 p.m. (€ 55,800 p.a.) in the eastern federal states.

The Care Insurance aims to secure the employee financially against the risk of becoming dependend on care or permanent attention. Presently, the combined employer- and employee contributions amount to 1.7 % of the monthly gross salary. Since 2005, childless employees have to pay an additional premium surcharge of 0.25 percentage points (i.e.: employer = 0.85 %, childless employee = 1.1 %).

Workmen's Compensation Insurance: The workmen's compensation associations (*Berufsgenossenschaften*) provide benefits in case of occupational diseases and injuries suffered on the job or on the way to or from work. The contributions vary with the degree of risk in a particular job and range from 1 % to 4 % of the payroll. The cost is borne in full by those employers who are mandatory members of the workmen's compensation associations for their particular industry.



Social Security System	Pension Insurance	Health Insurance	Unemployment Insurance	Care Insurance
Maximum insurable monthly earnings	€ 5,500 ¹⁾	€ 3,750	€ 5,500 ¹⁾	€ 3,750
Maximum monthly earnings for mandatory insurance coverage	-	€ 4,162.50	-	€ 4,162.50
Rate in 2010	19.9 %	14.9 %	2.8 %	1.7 % ²⁾
Employer's portion	50 %	47 %	50 %	50 %
Employee's portion	50 %	53 %	50 %	50 % ²⁾

1) Applies to western federal states; maximum amount in eastern federal states is € 4,650

2) Childless employees pay an additional premium surcharge of 0.25 percentage points.

Individual Tax Computation¹⁾ as at 1 January 2010	Single individual / €	Married individual ²⁾ / €
Income from employment p.m.	3,500.00	3,500.00
Personal income tax	- 627.00	- 357.00
Solidarity surcharge	- 34.48	- 19.63
Pension insurance (9.95 %)	- 348.25	- 348.25
Health insurance (7.9 %)	- 276.50	- 276.50
Unemployment insurance (1.4 %)	- 49.00	- 49.00
Care insurance (e.g. childless member = 1.1%)	- 38.50	- 38.50
Net income	2,126.27	2,411.12

1) The church tax (8 to 9 % of the income tax) has not been taken into consideration.

2) Spouse also resident in Germany, but without employment; no children

Total Payroll Cost for Employer as at 1 January 2010	€	
Gross salary p.m.	3,500.00	} approx. 20.2 % of gross salary
Pension insurance (9.95 %)	+ 348.25	
Health insurance (7.0 %)	+ 245.00	
Unemployment insurance (1.4 %)	+ 49.00	
Care insurance (0.85 %)	+ 29.75	
Workmen's compensation insurance (total premium)	approx. + 35.00	
Total monthly cost	approx. 4,207.00	



4 LABOR LAW

In Germany labor relations between employers and employees are regulated by legislation, collective agreements (*Tarifverträge*) and contracts of employment. Some of the most important regulations are referred to below:

Working Hours: The working hours act (*Arbeitszeitgesetz ArbZG*) provides for a maximum working time of 8 hours per weekday (*Werktag*, i.e. every day other than Sunday or legal holiday). Exceptional regulations may allow up to 10 hours per day provided that within a period of 6 calendar months or 24 weeks an average of 8 hours per weekday is achieved. Average working hours are 40 per week. Overtime hours of wage earners have usually to be covered by extra payments or compensated with time-off.

Part-time Work: Full-time employees whose employment relationship has exceeded 6 months can request to work part-time provided the employer regularly employs more than 15 people. The employer has to accept this request unless he regards it as not feasible for operational reasons.

Holidays: The corresponding federal law (*Bundesurlaubsgesetz BUrlG*) stipulates a minimum of 24 weekdays (*Werktage*) annual leave during which employees are entitled to wage/salary. At a working week of 5 working days the minimum holiday entitlement consequently adds up to 20 working days. Collective agreements may, however, provide for paid holidays of up to 30 working days or more and for the payment of an additional holiday bonus.

Sickness: Employees have a legal right to the continued payment of wage/salary in the event of sickness for a period of 6 weeks. Afterwards further payments are made from health insurance.

Maternity Protection: During a period of 6 weeks prior to the childbirth, pregnant women are released from their obligation to perform work, and after the childbirth, mothers may not be employed for a period of at least 8 weeks. During this protected period, mothers are entitled to be paid maternity pay equivalent to the average income earned prior to pregnancy (largely paid from health insurance). Any termination of the employment relationship by the employer is invalid during the pregnancy and for 4 months after the childbirth. Following the protected period, the mother and/or the father can take parental leave (*Elternzeit*) jointly for all or part of the maximum duration of 3 years. With the employer's consent, up to one year of the parental leave can be taken later between the child's third and eighth birthday. Each parent who takes parental leave may work up to 30 hours a week. This rests on the provision *inter alia* that the employment relationship must have exceeded 6 months and that the employer regularly employs more than 15 people.

Termination: According to § 622 German Civil Code (*BGB*) the legal period of notice is 4 weeks towards the 15th or the end of a calendar month. On the part of the employer, notice periods are extended according to the duration of the employment.

In companies with more than 10 full-time employees the dismissal protection law (*Kündigungsschutzgesetz KSchG*) provides protection against wrongful dismissal for those employees whose employment relationship has exceeded 6 months. In such case, a notice of termination becomes valid only if



it appears socially justified (personal reasons regarding the employee's conduct or urgent business reasons). The employee has the right to appeal to the labor court within 3 weeks after receipt of notice. In case the labor court confirms the termination due to urgent business reasons, the employer may be required to pay a compensation to the employee.

Exceptional dismissal without notice is only possible if there is a reasonable and important cause due to the behaviour of the employee.

Works Council: In companies with at least 5 permanent employees a works council (*Betriebsrat*) may be elected at the request of one or more employees. The works council has the right of co-determination in certain social matters and personnel decisions and the right to information on specific economic matters. The election of a works council cannot be prevented by the employer, and it is not possible to terminate members of a works council.



5 RESIDENCE PERMIT

Foreign citizens who want to work or take up an employment in Germany require

- either a residence permit (*Aufenthaltserlaubnis*) to work as a self-employed person
- or a residence permit and a work permit (*Arbeitserlaubnis*) to take up an employment as a wage- or salary earner.

EU Citizens: In order to implement the freedom of movement within the European Union, residence permits are abolished for EU citizens. They are merely required to register with the registration authorities, in the same manner as Germans, and are to receive certification confirming their right of residence. Special interim arrangements apply for citizens of acceding countries which joined the EU on 1st May 2004 and 1st January 2007.

Citizens from outside the EU must have a residence permit in the form of a visa obtained from the competent mission abroad before entering Germany. Nationals of Australia, Canada, Iceland, Israel, Japan, New Zealand, Norway, South Korea, Switzerland and the United States of America can also obtain the necessary residence permit after arrival in Germany.

The granting of a residence permit needs prior approval by the immigration office (*Ausländerbehörde*) and – in the case of an intended employment – by the employment agency (*Agentur für Arbeit*). The immigration office is to issue the work permit together with the residence permit in a single act, subject to internal approval from the labor administration. A work permit will only be granted if it can be proven that the vacant position in question cannot be filled by someone holding a work permit for Germany.

Self-employed persons (e.g. managing directors of a German based corporation) do not need a work permit and are to receive a residence permit if a superior economic interest or a special regional requirement exist. In Bremen, the superior economic interest is being ascertained by the local Chamber of Commerce who will be asked to issue a written comment on the basis of the documents submitted by the applicant and a personal counseling interview.

As soon as the approval from the German immigration office is available, the German mission abroad will issue a preliminary three months' visa. The one-year residence permit will be issued by the local German immigration office after the applicant has taken up residence in Germany and registered the private domicile at the respective local authority. Managing directors who do not intend to take up permanent residence in Germany are recommended to apply for a multiple entry visa.

The residence permit can be extended after one year, however there is no legal right to the issue. For the extension it has to be proven *inter alia* that the corporation generates ample profit to ensure the applicant's livelihood and that private health insurance has been covered.

The unrestricted settlement permit (*Niederlassungserlaubnis*) can be issued under the conditions *inter alia* that the applicant

- has been holding a residence permit for five years
- has been contributing to a pension scheme for 60 months
- has a good command of the German language
- has a good knowledge of the German legal system and social order.



6 **ADVICE CENTERS**

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7 **DISCLAIMER**

Every effort has been made to provide accurate and complete information. However, no liability for the information and translation contained herein being up-to-date, correct or complete can be assumed. Users of the above information are encouraged to seek professional advice.

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