

Establishing subsidiaries in Germany

Foreign companies entering the German market face a number of legal and practical challenges – from selecting the appropriate legal structure to complying with regulatory requirements and registering for tax purposes.

Steps in the formation process

Choosing the optimal legal form

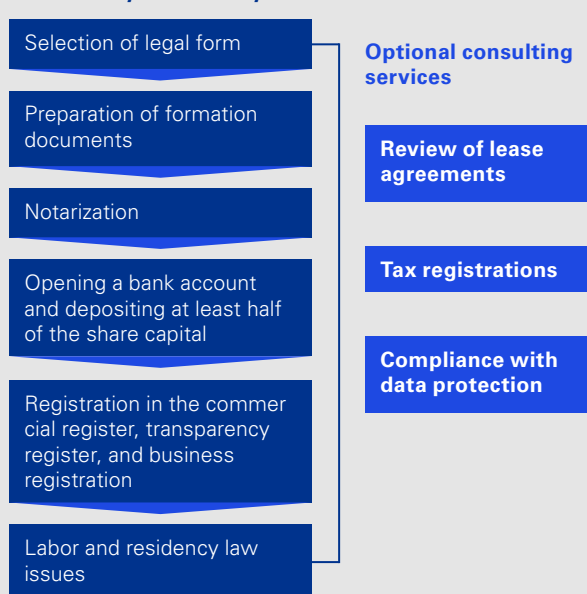
The main legal forms to consider are a stock corporation (AG: Aktiengesellschaft), a limited liability company (GmbH: Gesellschaft mit beschränkter Haftung), a limited partnership (KG: Kommanditgesellschaft), or a combination thereof in the form of a GmbH & Co. KG. The GmbH is the most commonly selected legal form as it offers flexibility in its structure and is subject to significantly fewer formalities than an AG.

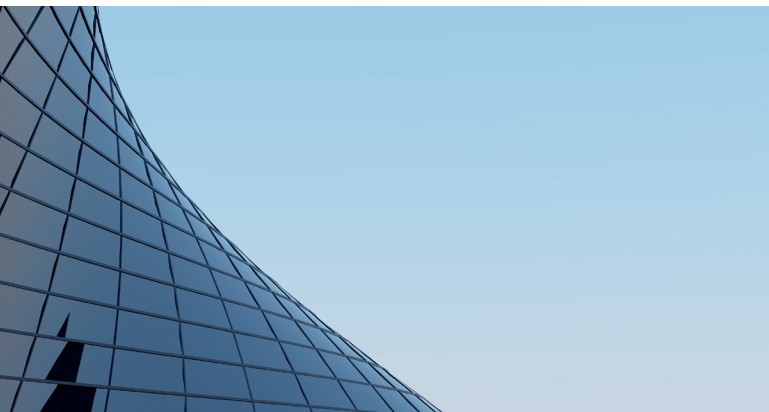
Preparation of the formation documents

The following documents are required for formation:

- the resolution to form the company
- the appointment of the managing directors, and
- the articles of association/incorporation or partnership agreement. Particularly when the company is being founded by multiple shareholders, comprehensive provisions should be included regarding
 - voting rights,
 - the adoption of resolutions (simple majority, qualified majority, unanimity), and
 - decisions requiring special majorities.
- The following matters also need to be addressed: transferability of shares, preemptive rights or co-sale rights, the withdrawal of shareholders/partners, as well as the powers of managing directors and the rights of shareholders/partners to control and receive information.

Steps required to establish a subsidiary in Germany





Our services:

We support you from the outset. Our interdisciplinary team will prepare all necessary formation documents and advise you on their optimal drafting and realization, including the formal requirements for signing the notarized certification of the formation documents, filing for commercial register entry, and instructing the new managing directors – all of which must be notarized. We also coordinate the work with notaries, banks, and public agencies and support you in the seamless fulfillment of all legal requirements. Where needed, we will also attend the appointment for the notarization of the formation documents on your behalf, prepare the necessary powers of attorney, and inform you about the relevant requirements for the notarization of the power of attorney in your home country.

Notarization

The formation documents must be notarized. In many cases the new shareholders/partners are not present in Germany for the notarization of company formation. While formation by power of attorney on behalf of the new shareholders/partners is possible, the power of attorney for this must also be notarized. In some cases, this can be done before a foreign notary, provided that the respective country has acceded to the Hague Convention. Otherwise, legalization by the respective foreign mission is required.

Registration in the commercial register, transparency register, and business registration

The application for entry of the newly formed company in the commercial register and the instruction of the newly appointed managing directors must be notarized. Corresponding to the notarization of the foundation documents, notarization by a foreign notary is also possible, provided that the respective country has acceded to the Hague Convention. Otherwise, legalization by the respective foreign mission is required. Representation of the managing directors for the purposes of signing these documents is not permitted.

In addition to entry in the commercial register, the company must also be entered in the transparency register. To this end, the beneficial owners must be identified. Furthermore, the business must be registered with the competent trade office for the newly established company.

Opening a bank account

Before the newly established company can be entered in the commercial register, a bank account must be opened into which at least half of the share capital is deposited. Owing to the KYC check, opening a bank account often takes several weeks.

Additional consulting services:

In addition to our expertise in corporate law for the formation of a company, we offer comprehensive consulting services on all matters relating to formation, including

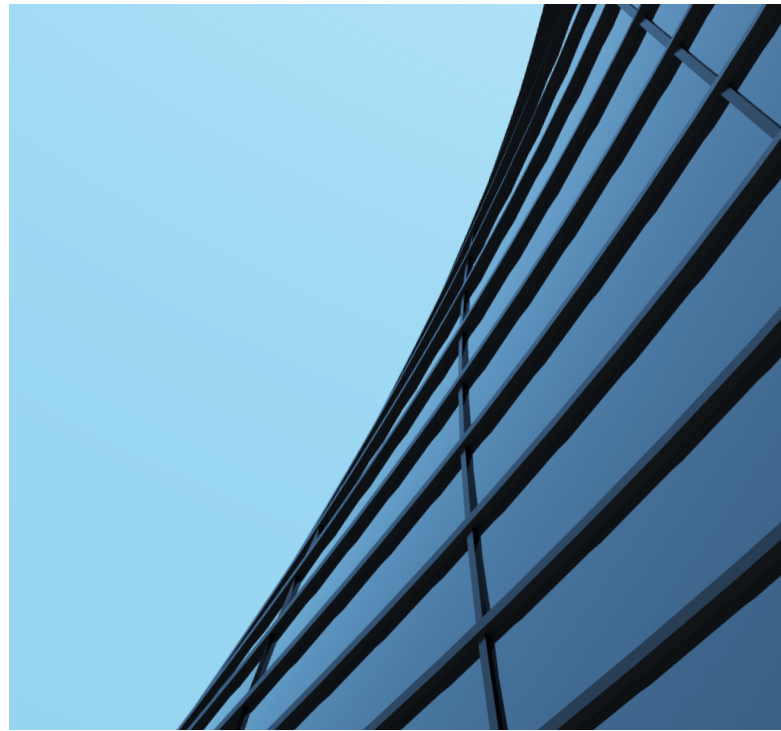
- registration in the transparency register and the identification of beneficial owners
- business registration
- reviewing lease documents when renting office, production, and warehouse spaces, as well as assisting with taking over such premises
- drafting employment contracts for both posted and locally hired employees, as well as explaining the specific requirements under German employment law
- assistance with obtaining residence permits for posted employees and advice on any additional requirements that may apply to foreign employees taking up employment in Germany
- reviewing other contracts relevant to your business in Germany, such as supply contracts
- compliance with data protection law

We maintain close contact with the experts at KPMG AG Wirtschaftsprüfungsgesellschaft, who can provide support in particular with

- payroll accounting for employees
- applying for a VAT identification number
- issues relating to permanent establishments
- advice on corporate income tax, value-added tax, and trade tax, as well as applying for the relevant tax identification numbers
- customs declarations, where goods are to be imported into Germany from abroad.

Perfectly positioned for you

You benefit from streamlined processes thanks to the well-coordinated procedures of our interdisciplinary teams, a strong network, and a comprehensive, integrated consulting approach.



Contact

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