

Overview of German types of Business ownership

Whether you start a business in Germany as a student or professional one of the most important question at the beginning is which corporate or business form should be selected. The two major differences are the taxes and the liability.

Freelancer, Sole Proprietorships and General Partnerships are underlying the German Income Tax system and the owners are fully liable with business and private assets for corporate debt.

Corporations like the limited liable company or the stock company are taxed by the Federal Corporate Tax Rate. Furthermore the owners are limited with their corporate money for corporate debt.

Another aspect is also the foundation of a company. The establishment of a corporation a notary is necessary which can increase the cost of implementation up to 1.500 Euro. The Partnerships and Sole Proprietorships need only a registration at the municipal trade office to get a trade license. This cost maximum 50 Euro.

A Freelancer just has to contact the Tax Authorities to receive a tax number. A registration is not necessary.

Below find some additional information regarding the individual business forms.

1. Freelancer (Freiberufler)

A freelancer is self-employed person (not a business) offering services, usually to businesses and often to multiple clients at a time. The German income tax law considers the following profession relevant for a freelancer.

- a. Lawyers, Tax Advisor, Tax Accountants, Public Accountants
- b. Physicians and any similar profession
- c. Notaries
- d. Engineers & Architects
- e. Interpreters, Translators and similar professions as well as Scientists, Artists, Writers, Teachers and Educators

But nearly every type of service a business would need could be provided by a freelancer, including (but not limited to), marketing, such as social media marketing, copywriting, and publicity, writing, such as articles and blog posts, technological support, such as web programming and design, creative works such as graphic design, and financial support or bookkeeping.

Important is that a freelancer **do not need** a trade license but just a tax number. This is what he gets from the local tax authorities.

2. Sole Proprietorship (Einzelkaufmann)

The sole proprietorship is the simplest business form under which one can operate a business. The sole proprietorship is not a legal entity. It simply refers to a person who owns the business and is personally responsible for its debts. A sole proprietorship can operate in Germany only under the name of its owner together with a fictitious name, such as "Finance2stay Michael Epping". The fictitious name is simply a trade name-it does not create a legal entity separate from the sole proprietor owner. To establish a Sole Proprietorship you need a trade license (Gewerbeschein) and a tax number.

3. **BGB Company (GbR - Gesellschaft bürgerlichen Rechts)**

A BGB Company in Germany is defined as a business operation which, due to its nature and scope, does not require a commercial organization. It needs minimum two owners to create a Small Business.

The accounts and official papers of any small business must contain the partners full first and surname. Artificial names can be chosen in combination with the name of the owner. To establish a BGB Company you need a trade license (Gewerbeschein) and a tax number. Also helpful is a shareholder agreement which regulates the rights and duties of the owners.

4. **Ordinary Partnership (offene Handelsgesellschaft, OHG)**

A general partnership (OHG) must consist of at least two partners. Legal entities may also be members of an OHG, regardless of whether they were established under German or foreign law (comparable to a GmbH).

In principle, the right to represent the general partnership (OHG) as a whole may be exercised individually by all partners. The joint representation of the partnership by several partners or the exclusion of individual partners from representing the partnership, however, can be specified in the shareholder agreement.

All business correspondences and the letterhead must state the firm, the legal form and the location of the partnership, the court of registry, as well as the registration number. To establish a Ordinary Partnership you need a trade license (Gewerbeschein) and a tax number as well the company as to be registered at the commercial register (Handelsregister).

5. **Limited Private Partnership (Kommanditgesellschaft, KG)**

A limited partnership (LP) is a form of partnership similar to a general partnership, except that where a general partnership must have at least two general partners (GPs), a limited partnership must have at least one GP and at least one limited partner.

The GPs are, in all major respects, in the same legal position as partners in a conventional firm, i.e., they have management control, share the right to use partnership property, share the profits of the firm in predefined proportions, and have joint and several liability for the debts of the partnership.

As in a LPP, the GPs have actual authority, as agents of the firm, to bind the partnership in contracts with third parties that are in the ordinary course of the partnership's business. To establish a Limited Private Partnership you need a trade license (Gewerbeschein) and a tax number as well the company as to be registered at the commercial register (Handelsregister).

6. **Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)**

The limited liability partnership (GmbH) is a legal entity in its own right. The required capital of a GmbH must total a minimum of 25,000 Euro at the time of the establishment of the company due to liability reasons. The original capital contribution of each partner must be at least 1 Euro.

The contributions of partners are allowed to be made in assets. In this situation, the items used to make the contribution together with their estimated values must be stated in the partnership contract. The assessed value of such contributions must be stated in a special report concerning the company's foundation on the basis of non-cash contributions.

The minimum payment to found a GmbH is one quarter of each original capital share,

provided these payments are made in cash and not in assets. The total sum, including the full value of all payments made in assets, must, nevertheless, be at least half of the minimum capital requirement (=12,500 Euro). Failure to pay the nominal capital amount will in no way reduce the liability of the individual. As individuals, partners are not directly liable to the company creditors and, therefore, risk only the loss of their original contribution.

A GmbH may also be founded by a single individual as a so-called "Ein-Mann-GmbH" (One-man-GmbH). In the event that the nominal capital contribution for an Ein-Mann-GmbH is not paid in full, collateral is required for the outstanding balance. Legal entities, regardless if they are licensed under German or foreign law, may also be members of a GmbH.

The GmbH is judicially and non-judicially represented by its managing director(s) (Geschäftsführer). These individuals need not reside in Germany and may, though they are not required to, be partners of the company. The directors are to be appointed and dismissed by the corporation meeting of the partners and are to be listed in the Commercial Register.

All business correspondences and letterhead must contain certain information about the company including the firm (= name of the company), the legal form of the company, the location and court of registration, its registration number in the Commercial Register, and the first and surname(s) of the managing director(s)

7. Entrepreneurial Company at limited liability (Unternehmergesellschaft (UG) haftungsbeschränkt)

Since November 1, 2008, a new form of the GmbH is available, the entrepreneurial company at limited liability (Unternehmergesellschaft (UG) haftungsbeschränkt). It is a simple version of a GmbH and can be founded with a capital of at least 1 Euro. The incorporation is easier and cheaper than the incorporation of a GmbH, but it still needs a notary to implement.

In order to achieve the capital of a GmbH one day, the UG haftungsbeschränkt is legally required to set aside reserves of a fourth of the annual surplus. Having achieved the capital of a GmbH, it may apply for a change of name and legal form with the Register Court.

| | GbR | oHG | KG | PartG | UG | GmbH | AG |
|---|-----|-----|-----------------------------|--|----|------|----|
| Partnerships | ✓ | ✓ | ✓ | ✓ | | | |
| Companies | | | | | ✓ | ✓ | ✓ |
| Minimum share capital | | | | | ✓ | ✓ | ✓ |
| Statutory reserve fund | | | | | ✓ | | |
| Shareholders' personal liability | ✓ | ✓ | Limited for limited partner | Liability limited in certain circumstances | | | |
| Cash investment | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Asset investment | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ |
| Formation by 1 person | | | | | ✓ | ✓ | ✓ |
| Compulsory entry in trade register | | ✓ | ✓ | Partnership register | ✓ | ✓ | ✓ |
| Notarisation of articles of association | | | | | ✓ | ✓ | ✓ |