

Company law

German company law offers a suitable legal structure for every type of business. As a rule, German company law distinguishes between partnerships and corporations limited by shares. As an entrepreneur, you can select the most suitable legal form, depending on the object of the company, the intended role of your shareholders, the flexibility required for the structuring of the articles of association and, to a certain extent, tax-related criteria.

The German Commercial Code contains rules regarding commercial partnerships, of which the limited partnership (Kommanditgesellschaft, „KG“) is the most common in trade and commerce. It is particularly small and medium-sized enterprises that opt for this legal form. Limited partnerships have at least one partner with unlimited liability, who may also be a corporation, as well as one or more limited partners whose liability is limited by their contribution.

The most important corporate forms under German law are the private limited company (Gesellschaft mit beschränkter Haftung, „GmbH“) and the public limited company (Aktiengesellschaft, „AG“). The GmbH is specifically designed to meet the requirements of small and medium-sized enterprises. The shareholders are largely free in their choice of articles of association, so that a customised solution can be designed, tailor-made to meet the individual needs and requirements. The articles of association do not need to set out every single detail, as the Private Limited Companies Act contains catch-all provisions. Therefore, in straightforward cases, the articles of association are no longer than one or two pages.

Almost one million companies in Germany have opted for the legal form of a private limited company („GmbH“). This is followed by the legal form of a limited partnership („KG“) chosen by 230,000 businesses. Approximately 180,000 entrepreneurs are registered as sole traders. 18,000 companies opted for the legal structure of a public limited company („AG“).

As the incorporation of a GmbH and any changes in its shareholder structure always require the involvement of a civil law notary, the shareholders can be identified at all times, as their names are listed on the commercial register (Handelsregister). Thanks to the commercial register, time-consuming research as to who the actual shareholders are is not necessary, and the transaction costs for the transfer of GmbH shares are low by international standards.

In 2008, the German law on private limited companies was completely updated. It is now even easier and more straightforward to form and run a GmbH. GmbHs incorporated in Germany can also operate abroad, as with the uniformly structured European sales subsidiaries of a group based in Germany. The reform has also introduced a new GmbH sub-type, the so-called entrepreneurial company (Unternehmergesellschaft, „UG“), which can be formed without the traditional minimum capital requirement.

In contrast, the statutory requirements for public limited companies, the large corporations, are more stringent, particularly if the relevant company is exchange-listed. This means that the capital markets can count on reliable transparent structures. The powers and competencies of the executive bodies and shareholders are largely prescribed by statute. Any deviations in the articles of association from the Public Limited Companies Act can be examined via the commercial register. Public limited companies are designed for large capital market-oriented companies. German law places great importance on the accuracy and transparency of shareholder resolutions.

As a consequence, these resolutions are irrefutable proof of the precise order of events at shareholder meetings, as the courts are bound by the determinations made by the civil law notary. Similarly, the notarially recorded minutes serve as the basis for entry in the commercial register.