



# Doing Business in Germany



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# Introduction

# About Vistra

Ranked among the top four corporate service providers globally, Vistra is a versatile group of professionals, providing a uniquely broad range of services and solutions. Our capabilities span across international incorporations to trust, fiduciary, private client services as well as fund administration.

We have a strong presence internationally, with offices throughout the Americas, Europe, Middle East, and Asia Pacific.

As a leading global player with expert industry knowledge and location specialists, Vistra has a deep understanding of the professional worlds of our clients and a proven track record of offering highly versatile solutions, providing the people, processes, and products that help our clients get the most from their international business.

## At Vistra, we are happy to assist you with expanding your business into Germany

Germany is the largest economy in Europe and the fourth-largest in the world (if calculated by GDP). It is also an “export powerhouse” – reportedly the third largest in the world in 2015 with USD 1.33 trillion worth of goods and services exported. In that same year, Germany recorded a trade surplus worth USD 279.44 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, Lufthansa, Mercedes-Benz, Metro, Nivea, Porsche, SAP, Siemens, and Volkswagen – inspires confidence in products and services. For all these reasons and more, Germany is one of the top investment destinations.

As a first step, we present you a brief insight into the country as well as into its economy, culture, customs, and regulations.



# Introduction to Germany

# Why Do Business in Germany?

## The strongest economy in Europe

With annual sales of EUR 2.9 trillion in goods and services, Germany is the strongest economy in Europe and one of the largest worldwide. Accounting for over 20% of the European Union's GDP, it is also the engine driving Europe's economy. In fact, Germany has weathered economic recessions rather well – improving its GDP, employment rate, and per capita income, and in effect, emerging as the strongest economy in Europe.

## Political stability

An important but often overlooked factor that contributes towards its strong economy is the political and social stability enjoyed in Germany. Germany is a federal parliamentary democracy and a Rechtsstaat (rule of law). As a founding member of the European Union (EU), Germany plays an active role in the decision making within the EU. The EU has been instrumental in promoting peace and prosperity within the region, which in turn has allowed countries to focus on economic and social development.

## The forefront of research & development

Germany is renowned for its research institutes such as Max Planck Institute, the Fraunhofer Institutes, and Helmholtz Association. German universities are very well known for the high quality of education provided. Germany is also the leader in the filing of patents, with a great deal of importance attached to research and innovation. The German federal government promotes research through the “High-Tech Strategy”. This initiative is particularly significant due to their contribution in solving global challenges. Support is also granted for key technologies that act as innovation drivers, including information and

communication technology, optical technology, production technology, material technology, biotechnology, nanotechnology, microsystems technology, and innovative services.

In addition to this support, there are also subsidy programs in place for all types of technology that are primarily targeted at small and medium-sized enterprises (SMEs). The “Central Innovation Programme for SMEs” (ZIM) is the best known programme, and is aimed to promote innovation and competitiveness for SMEs.

Due to the consistent support of research and development at a policy level, corporations in Germany have easy access to cutting edge technology.

## 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 resources

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 easily 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 often held in German cities such as Hanover, Munich, Frankfurt, and Berlin.



# The Difficulties of Doing Business in Germany

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

## 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 new investors.

## 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 corporates and personnel to overcome.

## 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 form of the business. The most popular business forms are:

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

## Branch

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

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

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

### Dependent branch

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 dependent 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

An independent branch is not a separate independent legal entity, it is organisationally a part of the enterprise of headquarters and to this extent, subject to the law of the headquarters. If the

branch establishment has been set up by a foreign enterprise, its internal constitution is based on the corporate statutes and competent foreign law. Despite internal dependence on the headquarters, it participates in trading activity 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 is necessary.

## The formation of a branch office

The following are 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 and 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 branch office is considered a permanent establishment under certain conditions only.

# 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 foreign investor's needs.

A GmbH is a fully independent legal entity with essentially two executive organs - 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 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.

## Appointment of managing directors (Geschäftsführer)

The shareholders appoint one or several 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, however, 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 responsibility 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 finalised, 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 authorisation requires a power of attorney for this purpose, signed by the shareholder(s) or their authorised 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 proved. 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
- If applicable, powers of attorney for the persons acting
- 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 management board.

The AG comes into existence upon registration in the commercial register. The application must be signed by the founding shareholders, the members 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 meetings and may under certain circumstances and under due periods of notice, propose resolutions of their own.

## KG

The limited partnership (KG) provides a certain limit to liability than 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.

A KG offers greater flexibility compared to other forms of partnerships as the capital base can be increased by including additional limited partners.

A KG is established when a partnership agreement between two or more partners is concluded. It is advisable for the partnership agreement to be made in writing. The liability of the limited partner will only become limited once the registration of the KG and the subscribed partnership contribution has been entered in the commercial register. The application

to the commercial register must be made by all partners and be certified and filed by a notary.

The KG does not possess its own legal personality distinct from the partners themselves. Nevertheless, it is similar to a legal entity in that it can sue and be sued before a court of law. It has rights and liabilities, for example, it can acquire possessions and other rights to real estates.

## GmbH & Co. KG

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 for 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 (Gewerbesteuer-gesetz), Income Tax Act (Einkommensteuergesetz), and Value Added Tax (VAT) Act (Umsatzsteuergesetz) among others.

These acts are supplemented by a number of specific acts to regulate the tax consequences of a given type of transaction or set of circumstances, examples are the Reorganisation Tax Act (Umwandlungssteuergesetz) or the Foreign Tax Act (Außensteuergesetz).

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

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 not based in Germany nor that have an executive board in Germany are only liable to corporate income tax on income generated inside Germany (e.g. via a permanent establishment, dividends, or licenses).

Every company 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 specific 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.

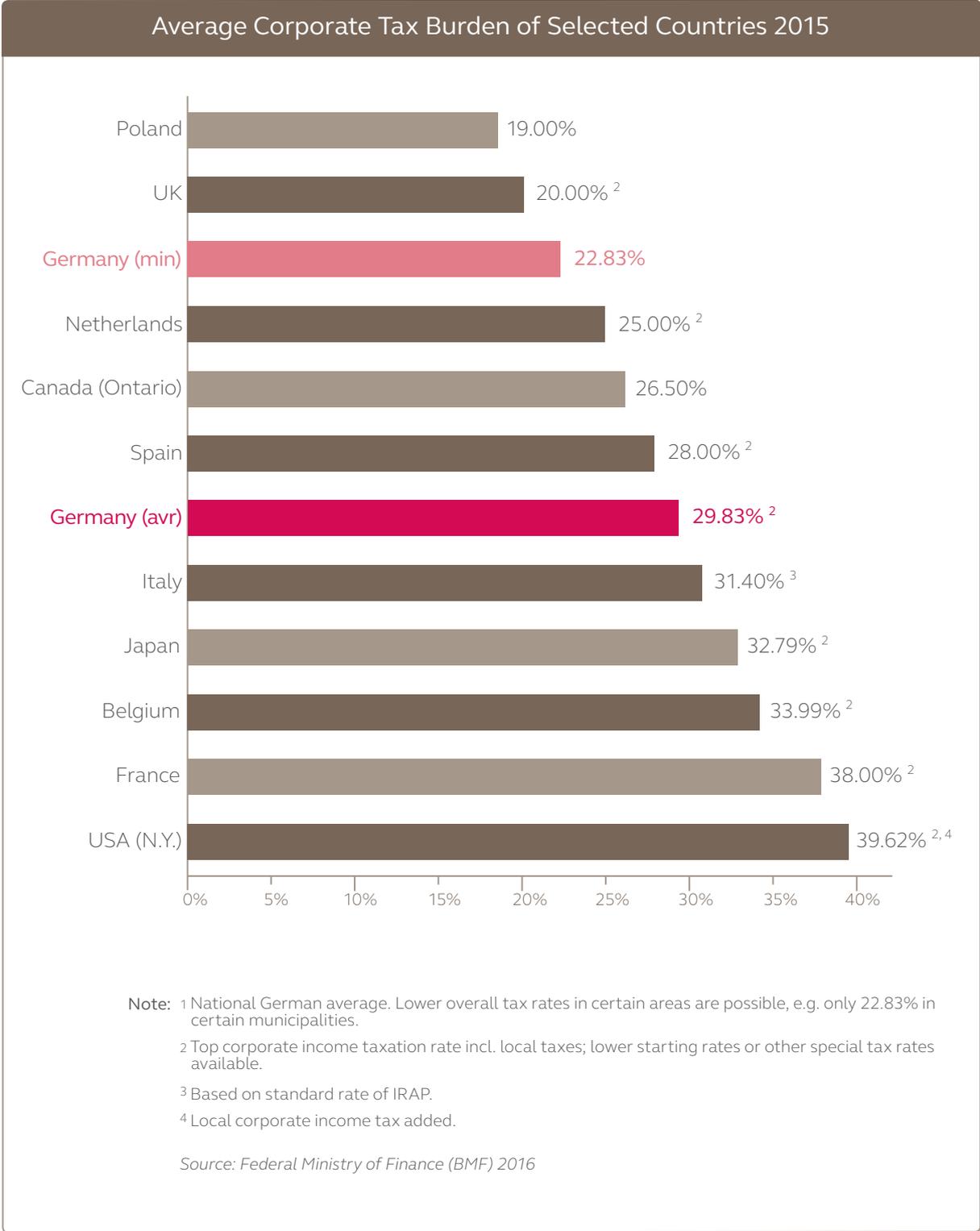
## Corporate income taxation

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%.

The graph below shows a comparison of tax rates between various countries. As is evident, Germany offers one of the most competitive tax systems in comparison to other large industrialised countries.



## Taxation of dividends

If a German subsidiary company distributes profits to its foreign parent corporation (dividend payment), generally a 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, or the parent company will be exempt from dividend-payable tax in the respective DTA state. The double taxation agreement with the USA for example even 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.

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 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.

## 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).

## 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.

Tax %	Tax Base (EUR)
0	8,6523
14	8,653-53,665
42	53,666-254,446
45	254,447 and over

# 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.

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.

## Terms of employment

### Employment contract

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

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

### 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.

### 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 in adheres to stipulated minimum wages.

The number of public holidays varies in each federal state, ranging from the minimum of 9 public holidays in some states to the maximum of 13 public holidays in other.

### 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.

### 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 day 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 only allowed to work during this time 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 sufficient for the termination to be regarded as 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 force of law. The statutory social security system is regulated in the Social Security Code (Sozialgesetzbuch/SGB).

Social security contributions are made up of:

- Health insurance
- Nursing care insurance
- Pension insurance
- Unemployment insurance
- Accident 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 applying. 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 employee's gross wage.



Your Partner in Germany

# How Vistra 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.

## Vistra's international expansion services in Germany

Vistra has a deep understanding of the various issues that corporates face when starting up in an unfamiliar territory. With our experience and the benefits of a large network of offices with local expertise, we are well positioned to support our clients with their global growth. Therefore, we have developed a dedicated business unit "International Expansion Services" offering:

- Corporate legal & compliance
- Global HR solutions
- Finance & accounting

### 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 Vistra, we can take responsibility for the legal paperwork by setting up and monitoring your foreign entity, acting as company secretary, and fulfilling fiduciary roles. We can also provide one or more German nationals who can serve as a director. In addition, Vistra provides domiciliation services, making its premises available as a registered office address.

Corporate legal and compliance services include:

- Company incorporation
- Company secretarial
- Company governance

Vistra provides domiciliation services, making its premises available as a registered office address. Separately, Vistra can provide one or more German nationals who will serve as a director.

### Global HR solutions

Managing staff overseas might be both the most essential and the most challenging aspect of international expansion. You can get lost among the varying 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 Vistra can help.

We have the know-how about 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 advice on requirements and local customs.

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

- Employee benefits
- Employee mobility
- Employment agreements

- HR advisory support
- HR governance
- Payroll
- Share plans

### 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 the required systems. Vistra International Expansion Services offer the perfect solution.

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

We provide various financial accounting and record keeping services, including issuing invoices, dealing with day-to-day accounting, customised financial reporting, and the preparation and filing of annual financial statements in line with German generally accepted accounting principles (GAAP) and International Financial Reporting Standards (IFRS).

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