This report provides helpful information on the current business environment in Germany. It is designed to assist companies in doing business and establishing effective banking arrangements. This is one of a series of reports on countries around the world.

Global Banking Service

Report on Germany

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Important to Know

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- German

Currency

- Euro (EUR)

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Source: www.goodbusinessday.com.

Types of Business Structure

Under German law, there are several business structures available. Some require a minimum amount of share capital to be paid up before the business can be established. The paid share capital must be actually and verifiably held in a bank account before the business is legally established.

Public limited liability company

AG (*Aktiengesellschaft*). This is a company whose shares are not usually registered to their owners and are tradable on a public stock market. This requires a minimum share capital of EUR 50,000, of which 25% of the capital cash must be paid up at the time the business is legally established (100% for contributions in kind), and all capital must be subscribed. Only one person is necessary to establish an AG. For a company with more than 2,000 employees, the workforce must have at least 50% representation on the supervisory board; for companies with 500–2,000 employees, the workforce must have one-third representation. An AG is required to have a legal reserve account in which 5% of its annual profits after tax must be deposited until the reserve reaches 10% of the equity capital.

Private limited liability company

GmbH (*Gesellschaft mit beschränkter Haftung*). This is a company whose shares are registered to their owners and therefore are not publicly tradable. This requires a minimum share capital of EUR 25,000, of which EUR 12,500 must be paid up (and can include contributions in kind) at the time the business is legally established.

Limited liability entrepreneurial company, or “Mini-GmbH”

UG (*Unternehmergesellschaft* [*haftungsbeschränkt*]). Under the reformed GmbH Act, a new legal form, the “mini-GmbH”, has been available since November 1, 2008. This new structure is a limited liability company that can have a minimum share capital of less than EUR 25,000 (i.e., EUR 1). It is required to have a legal reserve account in which 25% of its annual profits after tax must be deposited until the reserve reaches the minimum shareholder capital of a standard GmbH (EUR 25,000). It can then be converted to a standard GmbH. The cost for registration is around EUR 300 for a mini-GmbH.

General partnership

oHG (*Offene Handelsgesellschaft*). In a general partnership, all partners have full and joint liability. This requires no minimum share capital. It must be entered with the commercial register and local trade office. The cost for registration is around EUR 400.

Limited partnership

KG (*Kommanditgesellschaft*). In a limited partnership, some partners enjoy limited liability (*Kommanditisten*) although they are not permitted to exercise managerial control. Other partners are considered general partners (*Komplementär*), and have unlimited liability. This requires no minimum share capital. The cost for registration is around EUR 400.

Partnership limited by shares

KGaA (*Kommanditgesellschaft auf Aktien*). A partnership limited by shares allows some partners to limit their liability to the amount invested in the partnership (similar to a shareholder in a limited liability company), while at least one general partner must be fully liable. The shareholders can sell their shares to third parties.

Cooperatives

Cooperatives are governed by the Cooperative Act and its amendments. German law recognizes one form of registered cooperative (eG – *eingetragene Genossenschaft*), which must have a minimum of three founding members and must be registered with the Cooperative Societies.

Other organizational types

The corporate partnership (GmbH & Co. KG) is a limited partnership (KG) in which the general partner is a limited liability company (GmbH). The GmbH is fully liable for the GmbH & Co. KG's debts and liabilities. The liability of the limited partners is limited to their respective share of the partnership capital.

A civil law partnership (GbR – *Gesellschaft bürgerlichen Rechts*) is an association of individuals or entities that form a partnership for a joint contractual purpose.

PartG (*Partnerschaftsgesellschaft*). This is a special type of partnership for certain professions, such as lawyers, physicians or tax consultants.

German companies are entitled to form European Economic Interest Groupings (EEIGs) with companies based in other European Union (EU)* member states. An EEIG performs particular activities on behalf of its member owners. An EEIG is also permitted to perform these activities with entities outside the EU. An EEIG has unlimited liability.

*The EU is an economic and political union of 27 countries (including all members of its forerunner, the European Community, as well as other countries in Central and Eastern Europe), 16 of which use the euro as a common currency.

A *Societas Europaea* (SE) is a European public limited company, which can be established in any European Economic Area (EEA)* member state. It must maintain its registered office and head office in the same country, and it is subject to the company law in that country.

*EEA countries include those of the EU and three of the four European Free Trade Association (EFTA) member countries (Iceland, Liechtenstein and Norway).

Branches and representative offices

Non-German companies are entitled to establish a branch in Germany. The term "representative office" does not exist under German commercial law and a representative office is usually registered as a branch in Germany. There are two types of branches in Germany:

- An autonomous branch (*selbstständige Zweigniederlassung*) office can only be established if the foreign legal entity is registered with a foreign commercial register and must have its own management and executive powers, separate bank accounts, separate balance sheet, and independent business assets. The autonomous branch office must be entered in the commercial register and registered with the local trade office.
- A dependent branch office (*unselbstständige Zweigstelle*) has no autonomy from the head office of the company and must only be registered with the local trade office.

Opening and Operating Bank Accounts

Residency

To be considered resident, a company must have its legal registration, or its centre of effective management, in Germany.

Domestic and foreign currency account restrictions

Residents are permitted to hold local currency (EUR) accounts outside Germany and foreign currency accounts both within and outside Germany.

Non-residents are permitted to hold local currency and foreign currency accounts in Germany.

All local currency accounts are fully convertible into foreign currency.

Anti-money laundering and counter-terrorist financing rules

- Account opening procedures require formal identification of the account holder and beneficial owners.
- Financial institutions have to identify clients for transactions exceeding EUR 15,000 conducted in cash or precious metals.

Supplied by BCL Burton Copeland (www.bcl.com). Data as at August 2009.

Special purpose accounts required by local regulation

None.

Value-added tax (VAT) on banking services

Under German law, several financial and insurance services are exempt from VAT.

Payment and Collection Instruments

Electronic funds transfers are the most common payment instrument for both domestic and cross-border payments in the EEA. They can be initiated using Internet banking and other electronic banking facilities. Non-urgent credit transfers / giros are the primary payment method used to make payroll payments, with a number of enterprises using third-party payroll agencies. They are also the most common method of payment for business-to-business transactions along with direct debits. Card payments are commonly used for consumer transactions, with debit cards much more popular than credit cards. Direct debits are widely used to collect domestic payments and are the most popular cashless payment instrument by volume in Germany. There are two types: the non-pre-authorized direct debit (*Einzugsermächtigungsverfahren*), which is mainly used to collect regular payments such as utility and insurance payments, and the pre-authorized direct debit (*Abbuchungsauftragsverfahren*), which is used for higher-value inter-company payments. Cheque usage is limited.

Payment Instrument Use (domestic)

Payment instrument	Transactions (million)		% change 2008/2007	Traffic (value) (EUR billion)		% change 2008/2007
	2007	2008		2007	2008	
Cheques	73.93	65.18	– 11.8	440.74	407.80	– 7.5
Credit transfers	5,476.41	5,624.59	2.7	64,520.50	61,898.26	– 4.1
Direct debits	7,271.34	7,982.19	9.8	11,608.33	11,330.22	– 2.4
Debit cards	1,646.80	1,862.21	13.1	107.92	117.95	9.3
Credit cards	363.43	382.15	5.2	31.82	34.08	7.1
Card-based e-money	48.92	48.75	– 0.3	0.16	0.17	6.3
Total	**14,880.83**	**15,965.07**	**7.3**	**76,709.48**	**73,788.48**	**– 3.8**

Source: ECB Payment Statistics, September 2009.

Single Euro Payment Area (SEPA)

SEPA payment instruments allow enterprises to make and receive EUR-denominated credit transfers, direct debits and debit card payments from a single bank account to and from other parties located anywhere within the EEA and Switzerland. The use of International Bank Account Numbers (IBANs) and Bank Identifier Codes (BICs) is compulsory for transfers denominated in EUR between bank accounts in the EU.

International Payments

International payments, including foreign currency payments and payments to and from parties located outside the EEA, are processed through same-bank networks, through multibank alliances or by using traditional correspondent banking techniques.

Payment Processing Times

Transactions processed (EUR-denominated)	Value dating rules	Cut-off time(s) in local Central European Time (CET)
High-value and urgent domestic and intra-EEA transfers	Settlement in real time with immediate finality	17:00 CET
Non-urgent, low-value domestic consumer payments	Most payments are settled on a same day basis. Cheques are settled on a next-day basis and direct debits are settled on a five-day cycle.	There are rolling cut-off times for different types of transactions. For settlement on a same-day basis: Credit transfers = 07:00 CET SEPA credit transfers = 12:00 CET Collection orders = 09:00 CET For settlement on a next-day basis: Credit transfers = 20:00 CET Collection orders = 21:00 CET Large-value image-based cheque payment data (i.e., for cheques above EUR 6,000) is collected between 21:00 and 10:00 CET, with the electronic images received from 06:00 to 10:00 for settlement at 13:00 CET.
Non-urgent intra-EEA credit transfers with a maximum value of EUR 50,000*	Settlement either same-day or next-day	13:00 CET for same-day settlement or 01:00 CET for overnight settlement

* SEPA credit transfers are not subject to a maximum value threshold.

Central Bank Reporting

The Bundesbank collates balance of payments statistics from monthly reports on transactions between residents and non-residents.

The Bundesbank currently requires all transactions between residents and non-residents greater than EUR 12,500 to be reported on a monthly basis and within seven days of the end of the reporting period.

Since January 1, 2008, resident companies have been required to report all outgoing payments within the EU and EFTA directly to the Bundesbank. Information on other payments is usually submitted by the banks.

If a resident company's foreign assets and liabilities are greater than EUR 5 million or equivalent, they must be reported to the Bundesbank on a monthly basis and within 20 days of the end of the reporting period.

Exemptions from reporting include payments made / received for imported / exported goods, payments / repayments of loans, and deposits with an agreed maturity of up to 12 months.

Exchange Arrangements and Controls

Germany applies few currency exchange controls. There are some restrictions on foreign investment in the media, shipping and air transportation. Restrictions also apply to resident insurance companies or pensions funds that purchase securities and / or real estate from non-EU residents if the asset being acquired exceeds 5% of their guarantee assets or 20% of other restricted assets.

Cash and Liquidity Management

Germany is not usually selected as the location for the header account for cross-border liquidity management structures because of the impact of restrictions such as lifting fees and central bank reporting requirements.

Physical Cash Concentration

Physical cash concentration is available from all large German and international banks. Resident and non-resident companies can participate in the same domestic cash concentration structure, although central bank reporting requirements apply to payments between residents and non-residents greater than EUR 12,500.

Notional Cash Pooling

Notional cash pooling is available from some large German and international banks. Resident and non-resident companies can participate in the same domestic notional cash pooling structure as well as different legal entities. However, banks are not permitted to offset debit and credit balances on accounts. In addition, inter-company cross-guarantees are required for accounts with different beneficial ownership structures.

As such, non-resident entities do not usually participate in cross-border notional cash pooling structures located in Germany.

Short-term Investment

Bank instruments

Interest-bearing current accounts are generally available, but interest rates are usually low. Banks offer time deposits in a range of currencies for terms ranging from overnight to up to a year, although these can be subject to minimum investment requirements. Amounts invested are usually between EUR 100,000 and EUR 10 million. Banks occasionally issue fixed-rate (sometimes floating rate) certificates of deposit (CDs), usually for terms ranging from one to six months.

Non-bank instruments

Instead of issuing short-term unsecured commercial paper (CP), German companies can issue promissory notes (*Schulscheindarlehen*) via private placement with maturities of two to ten years. However, as several large banks have recently developed commercial paper programmes, the number of domestic investors is increasing. The most common maturity is for three months, though they tend to range from one week to two years. Investors have access to the wider euro commercial paper (ECP) market as well. The maximum maturity of the paper is one year, although ECP is usually issued for shorter periods. Issuers have a published credit rating.

The Bundesbank issues fixed rate or non-interest bearing Treasury bills (*Bundesschatzanweisungen*), for periods of up to two years, on behalf of the government. Treasury discount papers (*Bubills*) are also available at a discount with maturities of six, nine and 12 months.

European-based money market funds are increasingly popular with German investors.

Short-term Borrowing

Bank

Overdrafts, bank lines of credit and bank loans are usually all available in Germany to both resident and non-resident companies. Banks will usually charge a margin over Euribor (the Euro Interbank Offered Rate) for EUR-denominated facilities. Other commitment and arrangement fees will also be charged.

Non-bank

Larger German companies issue commercial paper into ECP market. Issues into the ECP market require a rating, which generally limits issuance to larger corporations and financial institutions. ECP in a number of currencies can be issued for periods from a week to one year, depending on borrowing requirements and investor appetite.

Trade bills are commonly discounted and factoring (disclosed and undisclosed) is available.

Taxation

Corporate Taxation

- Resident companies are subject to taxation on their worldwide income. All income is categorized as business income and is subject to both corporate income tax (CIT) and to business / trade tax. The rate of CIT amounts to 15% and business / trade tax to between 7.0% and 17.2% of the trade tax base (which can differ from the tax base for CIT).
- In addition, a solidarity surcharge of 5.5% of the CIT is applied.
- The basis for trade tax must be increased 25% of the sum of:
  - all interest expenses,
  - 1/5 of the rent expense for moveable assets,
  - 13/20 of the rent for immovable assets, and
  - 1/4 of the licence fees,

  minus an exemption of EUR 100,000.
- Additionally the trade tax is a non-deductible expense.
- The average total tax burden amounts to a tax rate of 29.83% based upon an average municipal multiplier of the trade tax.
- Non-resident companies are subject to combined income tax at a rate of 15.825% (CIT of 15% plus a 5.5% solidarity surcharge thereof) on their German-sourced income. Where a German permanent establishment is deemed to exist, the profits are in addition subject to business / trade tax.

Advance Tax Ruling Availability

- It is possible to obtain binding information from the tax authorities for a fee.
- Advance pricing agreements are possible if a double tax treaty is applicable that contains a mutual agreement and consultation procedure comparable to Section 25 of the Organisation for Economic Co-Operation and Development (OECD) Model Convention (subject to a fee).

Withholding Tax (subject to tax treaties and other exemptions)

- From financial year 2009, a withholding tax of 26.375% (25% plus a solidarity surcharge of 5.5%) is levied on dividends paid to residents and non-residents. Non-residents based in the EU can avoid withholding tax on dividends under the EU Parent–Subsidiary Directive (upon prior application or through a reimbursement procedure for the withheld amount).
- Interest paid by a bank or financial institution to resident individuals is also subject to a withholding tax of 26.375%. The taxation of interest no longer differs from the taxation of dividends. Generally, interest paid to non-residents is exempt from German tax.
- Tax treaties or EU directives cap the maximum rate of withholding tax on payments to non-residents who are resident in particular countries.
- From financial year 2009, the withholding tax has a compensation / payment effect. In general, the income mentioned above need not be considered in the tax return.

Capital Gains Tax

- Ninety-five percent of the income derived from the sale of shares in German or foreign corporations is generally tax exempt (regardless of the size of the shareholding or any minimum holding period) and 5% is subject to tax (deemed a non-deductible business expense). Subsequently, capital losses derived from the sale of shares are not tax-deductible. Other expenses connected with the shareholding are tax-deductible unless they need to be capitalized or constitute a write-off of the investment.
- Capital gains derived from the sale of other assets are generally taxed at ordinary corporate income tax and business / trade tax rates. Corresponding capital losses are generally deductible.

Stamp Duty

- No stamp duty is levied on loan agreements.

Thin Capitalization

- In 2008, the German thin capitalization rules were replaced by the interest limitation rule.
- Interest expenses that exceed the received interest income are only deductible up to 30% of taxable earnings before interest, taxes, depreciation, amortisation and rental / leasing fees (tax EBITDA). All types of debt financing (including bank debt) are covered.

- The interest limitation rule includes three exceptions from the general rule which apply if:
  - the balance of interest income and interest expenses does not exceed EUR 1 million (threshold);
  - the corporate entity does not belong to a group of related companies (stand-alone exception); or
  - the claiming entity is able to demonstrate that its equity ratio is not lower than 1% compared to the overall equity ratio of the group (equity ratio comparison or group exception).
- Due to the financial and economic crisis, the Federal Council of Germany has increased the threshold from EUR 1 million to EUR 3 million for the years 2008 until 2010 (legislation to be enacted).

Transfer Pricing

- Inter-company pricing between affiliated companies must be on an arm's length basis to be acceptable for German tax purposes.
- German tax authorities require companies to submit specific transfer pricing documentation and to keep all necessary records in Germany. There should be full and complete documentation to enable a detailed audit in Germany at any time.

Sales Taxes / VAT

- All goods and services are generally subject to VAT at a standard rate of 19%, with the exception of certain essentials that are subject to a reduced rate of 7%. Exports and intra-EU supplies are generally zero-rated provided that the invoice requirements are met and documentation of the transport abroad is available.
- Several financial and insurance services are exempt from VAT.

Payroll and Social Security Taxes

- Taxable income is liable to an individual progressive tax rate between 15% and 45%.
- Health, retirement, unemployment and nursing care insurance contributions are deducted from salary, subject to an annual income ceiling (which, in 2009, varies between EUR 44,100 and EUR 64,800). The rates are nearly the same for both employer and employee; each total approximately 20%.

All tax information supplied by Deloitte LLP (www.deloitte.com). Data as at April 1, 2009.

Report prepared October 2009.

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