

**DOING
BUSINESS
IN**

GERMANY



HLB Deutschland GmbH

*doing business
in Germany*

foreword

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HLB Germany
March 2008

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HLB International
Executive Office
21 Ebury Street
London SW1W 0LD
UK

Telephone +44 (0)20 7881 1100
Fax +44 (0)20 7881 1109
Email: mailbox@hlbi.com
Website: www.hlbi.com

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general information

Introduction

Germany is Europe's economic engine. The world's third largest economy offers a large domestic market and easy access to growth markets in the enlarged European Union. As world champion in exports, Germany accounts for around 10% of world trade. High performance combined with declining unit labour costs is the decisive factor for competitiveness. The professional standards of clerical, technical, and managerial staff are high. Labour relations are stable and industrial disputes rare. The geographical location and excellent infrastructure contribute to the importance of Germany as a strategically outstanding investment location.

Investments require security. Germany actively maintains a legal environment known for its integrity, safety, reliability and transparency. Contractual agreements are secure and intellectual property is strictly protected. Social, economic and political stability provides a solid bases for corporate projects. Germany has incentives ready up to 50% of capital expenditure. There are a great many ways to use public funds for investment projects.

Germany is one of the world's leader in innovation. Creativity and courage have generated countless innovative solutions. R & D is one of Germany's favoured causes, promoted with funds from the federal government of some € 5 billion annually.

Globalisation presents new challenges and competitiveness demands flexibility. Germany is taking advantage of its economic upswing to reform its economic structures, consolidate public financing, and invest for the future in order to remain the leading business location in Europe and one of the most competitive investment locations in the world.

Location and Infrastructure

Germany lies at the heart of Europe and covers an area of approximately 357,092 square kilometres (137,847 square miles). Neighbouring countries are Austria, Belgium, the Czech Republic, Denmark, France, Luxembourg, the Netherlands, Poland and Switzerland.

Germany has Europe's most advanced telecommunication infrastructure and the most reliable energy infrastructure. All trans-continental paths meet here in Europe's Centre, offering excellent proximity to customers, suppliers, and sources. A dense network of roads, seaports, inland ports, waterways, airports and railroads ensure on-time delivery. Germany offers many opportunities for doing business all over Europe and worldwide – regardless of east or west.

Population

The population of Germany is about 82.3 million. Due to the size of its population, Germany is the largest consumer market within the European Union. An excellent standard of living leads over 7 million foreigners to make their home in Germany. Educational opportunities are diverse, accessible, and excellent. Besides German, most citizens speak one or two other languages of which English, French and Russian are the most common.

Government and Legal System

For business success a reliable framework of underlying conditions is one of the most important factors. Germany has been successfully established as a democratic home for modern, pluralist and open-minded people. Germany is a modern constitutional Republic. The principle of the divisions of power guides the parliamentary democracy, which is based on a multiparty, coalition-based system. The Government is committed to transparency, citizens rights, freedom of speech and press.

16 Federal States called "Länder" (Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hessen, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Saarland, Brandenburg, Mecklenburg-Vorpommern, Saxony, Sachsen-Anhalt and Thüringen) form together the Federal Republic of Germany.

Companies can benefit from a reliable legal system. The Constitutional Law provides freedom and stability – although initially only for the Germans in the West of the nation that remained divided until 1990. The primacy of constitutional rights, the definition of the principles of a democratic and social federal state, and the foundation of a Federal Constitutional Court that watches over adherence to the

constitution – these are the basic cornerstones of German democracy. In addition, around 1,900 federal laws govern practically all areas of life. Some areas are governed by the 16 Federal States on a regional basis (e.g. Education, Police-Law).

The judicial system is operated by the Federal Constitutional Court (Bundesverfassungsgericht) and Courts in five different judicial branches. Each branch has its own Federal Supreme Court and lower courts in each Federal State. Additionally, there is a Supreme Court for Intellectual Property as a sixth Supreme Court (but without specialised lower courts).

- The ordinary courts, Lower Court (Amtsgericht), District Court (Landgericht), Court of Appeal (Oberlandesgericht) and Supreme Court (Bundesgerichtshof) have jurisdiction over civil matters not assigned to special courts, and are overall responsible for criminal matters.
- Labour courts rule on disputes between parties to a collective labour agreement, between employers and employees as well as certain special cases. There are Labour Courts, High Labour Courts and the Federal Labour Court.
- Administrative courts decide on public law disputes if they are not assigned to another court. There are Administrative Courts, High Administrative Courts and the Federal Administrative Court.
- Tax courts decide on all matters of tax law and excise duties. Surprisingly, there are no lower courts, but only the Tax Courts as High Courts (normally one per Federal State) and the Federal Tax Court.
- Social courts are responsible for disputes relating to social security insurance, unemployment insurance and other sectors effecting social rights. Again, there are Social Courts, Higher Social Courts and the Federal Social Court.

Economy and Currency

Germany is an industrialized nation with stable economic conditions, an efficient industry and highly qualified workers. The geographic location and excellent infrastructure contribute to the importance of Germany as a strategically outstanding investment location. Germany provides a good and solid investment climate and the economic policy generally welcomes foreign investment.

Germany is a founding member of the European Union and takes a leading role in the harmonisation process. Germany supported the admission of further Member States, most of them Eastern European states. Situated in the centre of the enlarged European Union, Germany is a gateway to Eastern European markets.

The official currency in Germany and the other fourteen Member Countries of the European Monetary Union (EMU) is the Euro. The participating countries were deemed by the European council to have satisfied the convergence criteria "price stability", "no excessive government deficits" and "no excessive government debt".

Germany is the world third largest economy. Accounting for 22% of the EU's GDP, it is also the engine driving Europe's economy. The Gross Domestic Product (GDP) in 2007 amounted to 2,423 billion Euro. The GDP per sector of the economy (2007) was: Services 51.3%, Industry & Construction 30.0%, Trade 17.8%, Agriculture 0.9%. The average inflation rate in 2007 was about 2.2%.

One of the factors for the German economy's great success is the principle of a social market economy. The relationship between the government and the private sector is based on the concept of a free market economy with fairly clear-cut boundaries. The state should

restrict itself to setting up the framework in which the economic decisions of all parties can freely be taken.

German firms have been able to increase their competitive strength considerably in recent years. Exports are flourishing and an increasing number of enterprises have been established, in particular by foreign investors. With € 400 billion in foreign investments, Germany is a much sought-after business destination. Approximately 40,000 foreign companies – including the world's 500 largest corporations – operate here.

Germany pursues a very open approach to international trade which plays an important role in the economy of the country. Germany has only a few natural resources, but has a specialised and efficient industry. Foreign trade policy is intended to encourage the freedom of movement in each sector of trade and to have a free attitude towards worldwide trade and capital movement.

The German Office for Foreign Trade Affairs (www.bfai.de) offers a wide range of useful information about business opportunities. They can assist you in establishing business relations with German companies. The free internet-based service enables foreign and German companies to record and publish their business interests easily and quickly by completing an online form. The German Business Portal (www.german-business-portal.info) is the central contact platform that steers all inquiries about Germany through the right channels. The goal is to make Germany and its domestic market more transparent to foreign companies interested in Germany as a location for their businesses. Invest in Germany (www.invest-in-germany.de) is the inward investment promotion agency of the Federal Republic of Germany. They assist and advise potential investors in Germany. Information about fairs and exhibitions is provided by www.auma.de.

investment factors

Special Features

Many regional, federal and European Union incentive programmes exist to promote investment in Germany. In particular, programmes exist to support investments in certain economic regions as well as in less developed regions of the country and especially in the East German States ("New Federal States"). In principle the level of grants available depends on the size of the enterprise and may, in individual cases, amount to as much as 50% of the investment.

Government Incentives

Public incentives may be classified as follows:

- Federal Programmes
- Regional Programmes
- Incentives by the European Union

The support is mainly provided in the shape of grants and allowances, advantages in the depreciation of assets, beneficial interest rate loans and the provision of security bonds, guarantees and other securities.

One of the most important federal incentives is the public investment grant (Investitionszulage). It is supervised by the federal tax authorities. In general, the investment grant means that certain manufacturing businesses in the New Federal States may claim a certain percentage of their investment in new assets as a grant. It is important that the assets are used only for manufacturing purposes and only in the region of the New Federal States for a period of five years.

Furthermore, the European Union programme on the "improvement of the regional economic structure" and the means provided by the European

development programme funds are other significant investment incentives. The main emphasis of the support measures has shifted to the New Federal States, because that is where investment incentives are needed most, especially for the starting of a business or profession (Existenzgründung) and maintaining it, environmental protection measures as well as research and development projects. But there are also some other regions in the western part of Germany, especially in the North, where firms may apply for the quoted European Union programme. These are regions with a weaker and less developed infrastructure.

However, especially in the New Federal States, the setting up and expansion of businesses as well as general investment in fixed assets are supported by numerous regional and federal aid programmes.

In principle, there are also a number of possible ways of obtaining grants from EU institutions. Public invitations to apply for this type of funding may be found in the Official Journal of the European Union. Assistance from European funds may be in the form of subsidies, loans at concessionary rates of interest, equity investments or the provision of venture capital.

However, support for enterprises is usually given indirectly through the provision of federal and regional grants funded by EU capital. The European Union provides support measures by means of the European Investment Bank (EIB), the European Coal and Steel Community (ECSC) as well as the European Regional Development Fund (ERDF). The EIB provides loans and guarantees for investment projects, which contribute to the support of a balanced regional development as well as serving the modernisation and

restructuring of companies in the interest of the community. These include development and implementation of new technologies, cross border technical and economic cooperation as well as investments in the area of environment and energy. The ERDF is intended to help level out regional differences in development and wealth within the EU. The measures of the EU also support investments in the New Federal States to a major extent.

Banking System and Sources of Finance

The German banking system consists of the German Federal Bank and a large number of private commercial banks, credit institutions incorporated under public law, cooperative credit institutions and specialised banks. All together, there are about 2,600 banks and credit institutes with an extensive network of about 38,000 branches. Banks, financial services institutions and insurance enterprises in Germany are governed by state regulator, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) and are regulated by the German Banking Act (Kreditwesengesetz – KWG).

The German Federal Bank (Deutsche Bundesbank) is part of the European System of Central Banks (ESCB) which comprises the European Central Bank (ECB) and the National Central Banks of all 27 EU Member States. The duties of the German Central Bank include country-specific tasks, within the framework of European monetary policy, such as, for example, joint decision-making and the implementation of a common European monetary policy, the management of currency reserves and provision of a non-competitive giro system for the banks.

In Germany, there are several hundred private commercial banks of which the largest are: Deutsche Bank AG, HypoVereinsbank AG, Dresdener Bank AG and Commerzbank AG. They grant short-term loans and credit lines, medium and long-term loans, and trade in securities

for customers and their own account. They are also allowed to own shares and other equity interests in other industries.

The credit institutes incorporated under public law (mainly savings and loan banks) are mostly municipal and regional banks coordinated through central institutions, which serve as regional clearing houses. They offer the same type of services as the private commercial banks.

Credit cooperatives for trade (Volksbanken) and for agriculture (Raiffeisenbanken) generally grant credit lines and long-term loans to their members – generally smaller businesses, but also individuals. Regional and federal central institutions serve as clearing houses and sources of refinancing.

Mortgage banks (Hypothekenbanken) are specialised in long-term mortgage loans and long-term loans to federal, state and local governments. They issue bonds secured by mortgage loans and loans to public authorities.

In addition, a number of private and public banks provide highly specialized services and special forms of financing. Insurance banks and leasing companies also play an important role in the financing of industrial business.

Foreign Exchange Controls

The Euro is freely convertible into other currencies, and the import and export of capital is free, subject only to reporting requirements.

A free European capital market was introduced by the relevant EU directive which completely abolished all restrictions on the transfer of capital between EU Member States.

Employment Regulations

In Germany, there are a number of general legal regulations which establish a general framework for wages and salaries as well as for other terms and

conditions of employment. Detailed terms and conditions (e.g. the level of wages and salaries, working hours, notice periods, holidays, social security payments etc.) are generally agreed upon in collective negotiations between the employee unions and the employers associations. Companies which are not member of such a board of representatives, in principle, can negotiate their employment conditions independently. However, certain statutory requirements must also be taken into account.

A foreign national who intends to work in Germany for a resident or non-resident employer generally needs a residence permit and a working permit.

Before entering Germany, a foreign national from outside the EU must obtain a prior residence permit (Aufenthaltsgenehmigung) in the form of a visa from an official representative of the Federal Republic of Germany in his home country, if he or she intends to stay more than three months or to take up paid work. The granting of a visa needs prior approval by the immigration authority (Ausländerbehörde) of the place where the foreign person intends to settle if he or she intends to stay longer than three months in Germany or intends to work in Germany. In the latter case, the employment authority (Agentur für Arbeit) must also approve the granting of the visa.

Nationals of EU Member States enjoy special privileges. They will usually be granted residence permit without any difficulties and they do not need separate work permits. However, there are certain specifications for the citizens of the new EU member states.

In addition to a residence permit, foreign nationals from outside the EU who are not self-employed and intend to work in Germany need a work permit. A work permit is issued by the local employment authority for the geographical area where the job is located. The foreign person

who intends to work in Germany and applies for an entry visa at a German consulate or embassy abroad must provide evidence at the time of application for the visa that the local employment authority has assured him or her that a work permit will be granted. Members of the management board of corporations are inter alia exempt from the requirement of a work permit.

In general, all employees working in Germany are subject to mandatory social insurance, regardless of their citizenship or the residence of the employer. Employees temporarily delegated by a foreign employer to a German branch of the enterprise are generally exempt from German social security payments.

The German social security system provides for pension insurance, unemployment insurance, health insurance and nursing care insurance. The contributions are shared equally or – in the case of health insurance – nearly equally by the employer and the employee. Contributions in 2007 in percentages of gross salary were:

- pension insurance 19.9 %
- unemployment insurance 4.2 %
- health insurance (average) 14.2 %
- nursing care insurance 1.7 %

The percentages are applicable only up to a maximum base income. In 2007, this maximum base was € 63,000 p.a. for pension insurance and unemployment insurance, and € 42,750 p.a. for health insurance and nursing care insurance. In excess of this maximum, neither employer nor employee pay further contributions. As mentioned before, foreign employees are subject to the same social security regulations as German employees. By contrast, there is no insurance obligation for a stay of less than three months and for certain part-time employment. However within the European Union, employees may remain in their national security system, if certain requirements of European law are fulfilled.

types of business organisations

Principal Forms of Business

German law offers a broad variety of legal forms for conducting business. An individual may wish to start business as a sole proprietor (Einzelkaufmann) or as a branch (Zweigniederlassung) of a foreign entity. An investor may, however, prefer to set up an independent entity in Germany, which is legally separate from his home country's business. In this case, the investor can select between a variety of forms of partnerships (Personengesellschaften) and corporations (Kapitalgesellschaften). These legal forms are:

- I. Sole Proprietorship (Einzelkaufmann)
- II. Partnerships (Personengesellschaften)
 1. General Partnership (Gesellschaft bürgerlichen Rechts)
 2. Business Partnership (offene Handelsgesellschaft – oHG)
 3. Limited Partnership (Kommanditgesellschaft – KG)
 4. GmbH & Co. KG as a special form of limited partnership with complete limitation of liability
 5. Silent Partnership (Stille Gesellschaft)
- III. Corporations (Kapitalgesellschaften)
 1. Limited Liability Company (Gesellschaft mit beschränkter Haftung – GmbH)
 2. Stock Corporation (Aktiengesellschaft – AG)
 3. Limited Partnership by Shares (Kommanditgesellschaft auf Aktien – KgaA)

I. Sole Proprietorship

In a sole proprietorship the owner is engaged in a typical commercial business. He is personally liable for all debts and has to register his business in the Commercial Register.

Setting up a sole proprietorship means little costs: Only the registration with the Commercial Register and the local authorities is necessary, but they require low registration fees.

II. Partnerships

1. General Partnerships

A General Partnership (Gesellschaft bürgerlichen Rechts) is a partnership which does not pursue a certain business and has no registered business name. It must have a certain non-commercial purpose. The General Partnership is useful e.g. for associations for professionals, for individual transactions or contracts (e.g. construction projects).

The General Partnership can be set up without any costs. As it has a non-commercial purpose, no registration is necessary. The Partnership may have – but does not need to have – a written partnership agreement. A written version is certainly better to prevent disputes, but it can also be made by oral or even non-verbal consent.

2. Business Partnerships

A business partnership (offene Handelsgesellschaft – oHG) is a partnership in which all partners are

jointly and severally liable for all debts. The relationship between the partners can be stipulated in a partnership agreement. Each partner has the right and the duty to be involved in the management. Although not a legal person, a general partnership can acquire rights and liabilities and obtain real property and other rights over land. Legal actions may be brought by or against the partnership, and not against the individual partners as a whole (such as in the case of a General Partnership).

The business partnership has to register with the Commercial Register and with the local authority, as it is a business organisation. A written partnership agreement is not necessary, but recommendable.

3. Limited Partnership

A limited partnership (Kommanditgesellschaft – KG) is a special form of business partnership. The major difference is that there is at least one limited partner whose liability is limited to his fixed contribution to the partnership (Kommanditist). Equally as the business partnership, a limited partnership has a general partner (at least one) who is fully liable (Komplementär). The partners own all partnership property in joint tenancy. The general partners are entitled to manage and to represent the partnership, whereas the limited partners may only participate in the management if the partnership agreement so provides. The partnership has to be registered in the Commercial Register.

4. GmbH & Co. KG

A very popular form of limited partnership is the “GmbH & Co. KG”. This type of partnership offers a complete limitation of liability. The general partner (Komplementär) is a GmbH, a corporation with limited liability. The result is that all partners benefit from a limited liability: the general partner because of its legal

form as corporation, the limited partners because of their role as limited partners within the limited partnership.

An investor who comes e.g. from a common law country may now ask why the whole business is not run in a corporation where liability is effectively limited to the same extent. The answer is that the partnership offers a lot of advantages in taxation and administration which corporations do not have. Another important factor in the past was that shares of partnerships were privileged for inheritance tax purposes. This was interesting especially for family owned businesses. In 2008, the rules of inheritance tax face major changes so that the inheritance of partnership shares will be taxed at an equal level as shares in corporations. But there are still advantages for partnerships in the normal run of the business.

It would be wrong to consider that the GmbH & Co. KG is preferable in every case. It depends very much on the demands and needs of the investor or businessman whether a GmbH & Co. KG is useful or not. Generally spoken, it can be said that the GmbH & Co. KG is preferable for smaller or family owned businesses and for those businesses where gains are not necessarily reinvested into the business but distributed to the partners. By contrast, foreign investors often choose a corporation as the legal form of their holding company. It must not be neglected that a GmbH & Co. KG is often less useful to a foreign investor especially in the context of double taxation treaties.

5. Silent Partnership

A silent company is a specific legal form of granting mezzanine capital. Depending on the partnership agreement, the capital can usually be qualified as equity rather than debt mezzanine capital. In a silent partnership a person contributes an amount of capital to an

existing business without incurring any liabilities towards creditors. In return, the silent partner shares in the profits (possibly also in losses). Besides for certain tax planning purposes, silent partnerships are used especially to allow third parties to share profits and risks of the business without the need to acquire rights and obligations not specifically covered in the silent partnership agreement and to avoid the disclosure of their investment since silent partnerships are generally not registered in the Commercial Register. However, it has to be registered if the business in which it participates is a stock corporation because this arrangement would be considered an agreement to transfer a portion of the profit. Also a silent partnership agreement with a limited liability company (GmbH) requires registration within the Commercial Register.

III. Corporations

1. Limited Liability Company

The limited liability company (GmbH) is the most common form of incorporated companies under German commercial law. Due to the flexibility it offers, the GmbH is generally preferred as a vehicle for closely held companies and subsidiaries for foreign corporations. Limited liability companies have a legal personality of their own. It can be formed by one or more persons. The persons may be individuals or corporate bodies, residents or non-residents, foreign or domestic companies.

The statutory minimum share capital amounts to € 25,000. Each shareholder holds a share of at least € 100 or any higher amount divisible by 50. If contributed by cash, at least half of the capital, € 12,500, needs to be paid in at the time of registration in the Commercial Register. The foundation of a Limited Liability Company must be stated by a notary public. The usual costs of

foundation are about 1,500 Euro.

The shares of a GmbH are, subject to the articles of association, freely negotiable. The transfer of shares has to be agreed upon in the presence of a notary public. This effort makes the GmbH relatively inconvenient for companies with a greater number of shareholders.

Any transfer of ownership can be made conditional upon the consent of the GmbH or the other shareholders or any other restriction in the articles of association.

The Articles of association, which have to be drawn up by a notary public, must contain:

- the company's name and registered office
- the purpose of the enterprise
- the amount of fixed capital
- the amount of capital contributed by each member.

The articles of association can include further arrangements. They can be designed to the specific needs and demands of the company and its members.

The company is properly formed when it has been registered in the Commercial Register of a local court. The appointment of one or more persons to manage the company can be provided for either in the articles or by agreements between the members. A managing director must be an individual person rather than a company but does not need to be a citizen or resident of Germany. The supervisory board is mandatory only if the GmbH has more than 500 employees. Shareholders' resolutions are taken at shareholders' meetings. Shareholders' meetings are normally called by the managing directors (or the supervisory board, if any) or by holders of at least 10 % of the share capital (as a means of minority protection). The meetings do not

need to be held in Germany. Votes can be cast through the use of telefax, etc. Unless otherwise provided within the articles of association, shareholders meetings include decisions of e.g. basic company policy, approval of the financial statement, distribution of profits, appointment and removal of the managing directors and amendments to the Articles of Association. Each € 50 participation entitles the owner to one vote. Decisions are made by simple majority of votes, subject to the provisions of the articles. In some cases, a 75 % majority is required by law.

In 2008, the law governing of German GmbH's is expected to undergo important changes. The major issues arising from the new law are:

- The minimum fixed share capital will be reduced to € 10,000.
- Start-up companies will be allowed to run the business without fixed share capital, but have to save the first € 10,000 of the company's gains as fixed share capital.
- The minimum value of a share will be reduced to € 1,-.
- Some administrative regulations will be abolished, e.g. the need for a one-man-company to present a bank guaranty if the fixed share capital has not fully been paid into the company at the time of registration with the company's register.
- The currently very difficult rules concerning the qualification of a shareholder's loan as equity or debt will be simplified, partly abolished and partly transferred to the Insolvency Code.
- The statutory provisions will be adapted to the jurisdiction of the European Court of Justice of recent years, especially concerning the location of the company. It will be possible to manage the GmbH from outside Germany.
- The danger of fraudulent misuse of the

company will be reduced.

- Cash-management-systems, currently permitted under uncertain conditions, will get clear statutory regulations. A cash-management-system is a system within a company group that ensures the solvency of each member company.

2. Stock Corporation

A stock corporation (AG) is the most suitable business vehicle for a large scale operation, especially an international business. The principal advantage of a stock corporation is that the shares of the corporation may be transferred with relative ease and can be listed on a stock exchange.

The holder of shares has no personal liability to creditors of the AG, but he is liable to the corporation for any unpaid consideration for his shares. Creditors can attach all of the assets of a corporation and thereby endanger or even wipe out the interests of the shareholders, they can not claim the personal assets of the shareholders.

The statutory minimum capital stock (Grundkapital) for an AG is € 50,000. The shares of a stock corporation can be held privately by individuals or publicly quoted on stock exchanges. The foundation of a Stock Corporation must be stated by a notary public.

An AG can be formed by one or more persons. These persons may be individuals or corporate bodies, residents or non-residents. The formation of an AG starts with the drafting of a deed, certified by a German public notary, in which the founders (or single founder) issue a declaration of formation, undertake the obligation to pay in the share capital and lay down the articles of incorporation. These articles must include:

- the corporation's name and registered office
- the purpose of the corporation
- the initial amount of fixed share capital
- the composition of statutory minimum capital (the par value shares and non- par value shares and the issue premium)
- the composition of the board of directors
- the method by which corporate announcements will be published.

The name of the corporation must always include the designation "AG" (Aktiengesellschaft). The stock corporation exists only when an entry is made in the Commercial Register.

Each stock corporation needs to have a board of directors and a supervisory board consisting of at least three persons. The shareholders meet and vote in the general meeting (Hauptversammlung).

The AG is managed and represented by the board of directors. Subject to the articles, all members of the board of directors must act jointly in both managing the corporation and representing the corporation vis-à-vis third parties. The board of directors has a duty to report periodically to the supervisory board about the business. There are no statutory restrictions on nationality or residence. A managing director may be a shareholder, but cannot be a member of the supervisory board and vice versa.

The supervisory board of the AG controls and supervises the board of directors, but may not participate in the corporation's day to day management. Members of the supervisory board are allowed to inspect books and records at any time and call extraordinary shareholder meetings. In addition, certain decisions of the board of directors have to be approved by the

supervisory board. It consists of at least 3 members, the number of members has to be divisible by three. Residence or citizenship in Germany is not required.

A general meeting of the shareholders has to be held annually. The meeting is normally held in Germany at the place where the AG has its registered office. The statutory rights of the general meeting include decisions regarding the appointment of members of the supervisory board, formal approval of the supervisory board and the board of management with respect to their activities during the preceding business year, the appointment of auditors, amendments of the articles of incorporation and reorganisation. Decisions are made by a simple majority of votes; in some cases a majority of 75 % is required by law.

There are certain regulations for the so-called "small stock corporation", e.g. fewer formalities with regard to dividend distribution, merger and invitation to the general meeting. Furthermore, smaller stock corporations are allowed to renounce the need to have the general meeting's decisions certified by a notary public. This applies especially to companies not listed on a stock exchange.

3. Limited Partnership by Shares

A partnership partly limited by shares (Kommanditgesellschaft auf Aktien – KGaA) has elements of a stock corporation and a partnership. It is a separate legal entity with legal rights and obligations separate from those of its partners. The capital stock is divided into par value shares. The liability of shareholders is limited to the amount of their investment of the company. However, there must be at least one partner who is fully and personally liable for the company's debts. This special form of corporation is not very common in Germany.

legal, accounting and audit requirements

Commercial Register

In most cases, registration with the Commercial Register is mandatory. The Commercial Register is a public record maintained by the local Lower Court (Amtsgericht). It contains information about the legal affairs of the enterprises existing in the area. The Commercial Register is divided into two sectors:

Sector A: for the sole trader, oHG and KG

Sector B: for the AG, KGaA and GmbH

Depending on the type of business organisation, companies are subject to special registration rules, e.g. a limited liability company is required to state:

- the name of the company
- the head office of the company
- the commercial purpose of the company
- the amount of initial capital of the company
- the date when the Articles of Association were signed
- the names of the managing directors.

Changes of managing directors need to be registered. Notices of appointment which have to be reported to the Commercial Register must be certified by a notary public.

Anyone is entitled to inspect the Commercial Register.

Financial Statements

With regard to accounting duties, all business enterprises are obliged to

prepare financial statements every year. The financial reporting requirements vary according to the size and legal form of the company concerned.

Irrespective of the legal form of the enterprise, every business is required to maintain accounts and to record in them its business transactions and its financial position in accordance with German principles of proper accounting. These principles are derived from a variety of sources and are constantly being updated. Specifically, German accounting principles require that entries be complete, correct and made in chronological order, that annual financial statements be prepared, that all computations be made in Euros and that books and records be maintained in German and kept for a certain period of time.

The questions as to which accounting rules apply and whether or not some more specific rules may be neglected depend on the size of the enterprise and of its legal form. In general, companies and partnerships where all partners with unlimited liability are corporations rather than natural persons (especially GmbH & Co. KG's) must adhere to the principles of the commercial Code (HGB). Enterprises with at least one natural person without limited liability are subject to the rules of the Disclosure Code (Publizitätsgesetz) which is more generous with the duties of accounting and disclosure. The size and the legal form of the company is also vital to the question of disclosure. If income and accounting statements have to be disclosed, they have to be

transferred to the Electronic German Federal Gazette (E-Bundesanzeiger). The Electronic Federal Gazette published all required information and is accessible to anyone.

The classification of corporations and GmbH & Co. KG's in different sizes depends on the following figures. To include a corporation or GmbH & Co. KG within a larger size, the company must meet two of the three criteria on two successive balance sheet dates:

euros	small	medium	large
balance sheet total	up to 4,015 million	up to 16,060 million	above 16,060 million
turnover	up to 8,030 million	up to 32,120 million	above 32,120 million
employees	up to 50	up to 250	above 250

Small companies are allowed to prepare an abbreviated balance sheet in which only specific items need to be included separately. There are some other exceptions for small and medium sized companies relating to the profit and loss statement and to the notes to the financial statements. Furthermore, the disclosure requirements vary according to the size of the company.

The financial statements of all medium and large sized corporations and GmbH & Co. KG's have to be approved by a German Chartered Auditor.

Accounting Principles

Accounting and valuation principles are laid down in the Commercial Code (Handelsgesetzbuch – HGB) as follows:

- Financial statements have to be correct, understandable and complete.
- Values must be determined prudently.

All foreseeable risks and losses arising up to the balance date have to be taken into account, but profits may only be taken up if they are realised at the balance sheet date.

- The valuation methods applied in the preceding financial statements should be retained.
- The going concern principle has to be followed.
- The financial year usually corresponds with the calendar year. The length of the financial year may not exceed twelve months.

The financial statements have to give a true and fair view of the financial affairs of the company.

The Accounting Law Reform Act (Bilanzrechtsreformgesetz – BilReG) was enacted in December 2004. The Accounting Law Reform Act introduced international accounting standards and ensures quality of annual audits. It implements into national law several EU directives in addition to the IAS regulations.

With the draft Accounting Law Modernisation Act (BilMoG) some important changes are expected in 2008 to German accounting rules. The changes are scheduled to be applicable from 01-01-2009. The aim of the Act is to adapt German accounting principles to international standards without leaving the field of accounting legislation to European IAS or US-GAAP. Some of the important changes may be summarised as follows:

- Rights of variable valuations of assets will be abolished.
- All Self-made intellectual properties have to be carried as assets.
- Changes in the valuation of pension liabilities.
- The influence of tax accounting rules on business accounting rules will be

reduced, while the opposite principle, the influence of business accounting rules on tax accounting rules, will stay in force.

- The key figures for the classification of corporations and GmbH & Co. KG's as small, medium or large, as outlined above, will be raised by about 20 %.
- Companies will have the right to account according to IFRS-standards. If they take this opportunity, they are allowed to produce HGB-based annual accounts in a shorter version only.

taxation

Tax Year

In general, taxes are levied on a calendar year basis. In case of a deviating business year, tax is due for the calendar year in which the business year ended. VAT is always levied on a calendar year basis in line with the European VAT regime.

General structure

First of all, a company's tax status depends on whether or not it is incorporated. Corporations are treated as taxable entities and are subject to federal corporation tax (Körperschaftsteuer), to the solidarity surcharge (Solidaritätszuschlag) and to the municipal trade tax (Gewerbsteuer).

In contrast, partnerships are transparent entities for corporation or income tax purposes. The income determined at the level of the partnership is allocated to the individual partners. The partnership files returns only for information purposes, and each partner declares his respective share of the partnership's profits or losses in personal income/ corporation tax returns. The partnership itself is only subject to trade tax. The main aspects of corporation tax are explained below.

Corporation Tax

Stock corporations ("AG" and "KGaA") and limited liability companies ("GmbH") resident in Germany are subject to taxation on their world wide income (unlimited tax liability). Non-resident corporations are subject to taxation on income from sources in Germany (limited tax liability). A corporation is considered resident in Germany, if it maintains either its seat or its central place of management in Germany. The central

place of management is where key decisions are regularly made. Otherwise, a corporation is considered non-resident.

In general, taxable income is calculated on the profit of the operating business under German GAAP (HGB) with certain add-backs and/or deductions. The main adjustment item is the financing cost deduction ("Zinsschranke"). For corporations within an affiliated group, the deduction of the surplus of financing costs over interest income is restricted to 30% of the income before depreciation, financing costs and interest (EBITDA). This does not apply, if financing costs do not exceed interest income by more than € 1,000,000. Disallowed financing costs can be carried forward for future deduction.

Trade Tax

Every business operating in Germany is subjected to trade tax on income ("Gewerbsteuer"). This also includes foreign owned business operations.

The tax base for trade tax is calculated on the profit of the business with certain adjustments. The most important adjustment is the partial addition of financing costs. One-quarter of the financing costs exceeding the amount of € 100,000 has to be added. For trade tax purposes, also annuities, share in profits of silent partners, 20% of rents for chattels and 65% of property rentals must be regarded as deemed financing expenses.

Trade tax is based on federal law, but is levied by local municipalities. The provisional assessment rate is established on business profits. 3.5 % of business profits is determined and multiplied by

200 to 490 % depending on local circumstances. As from 2008, this tax is a non-deductible business expense for the calculation of trade tax, income tax and corporation tax.

An allowance of € 24,500 on profits (of individuals and general partnerships) is granted. Most of the trade tax on profits of a partnership or sole trader can be set off against the respective income tax during the same year (no carryforward or carryback available), provided certain rules are observed.

Dividend Taxation

Germany applies the so-called “part-income system” (“Teileinkünfteverfahren”). Under this method, distributed profits are in principle subject to double taxation, which is, however, reduced through a relief both at the level of the company and the level of the shareholders.

At the level of the company, profits are subject to an aggregate tax rate of about 29.8 % (effective rate incl. solidarity surcharge and trade tax at a multiplier of 400 %). At the level of the shareholders, individuals are required to tax 50 % of the dividends distributed as investment income. Hence, the effective income tax rate for dividends is 23.74% in the highest bracket (incl. solidarity surcharge).

As from 2009, the taxable portion of dividends received by individuals through a partnership will be raised from 50 % to 60 %, so the effective rate will be 28.49 % in the highest bracket. Dividends from privately held shares will be subject to a flat tax in the amount of 26.375 % effectively (“Abgeltungssteuer”). It is optional to declare these dividends in the income tax return, so if the taxpayer’s personal tax rate is below 26.375 %, any exceeding withholding tax can be refunded.

If the shareholder is a corporation, only 5 % of the distributed profits is taxable, so the effective tax rate is approx. 1.5% (incl. solidarity surcharge and trade tax). This applies both to domestic and foreign dividend income.

Loss relief

Corporations can apply for a loss carryback of up to € 511,500 for corporation tax purposes (not for trade tax). Losses exceeding this threshold may be carried forward to be offset against profits in future years. However, the utilization in future years is limited to an amount of € 1m plus 60% of the income exceeding € 1m each year, which applies for corporation and municipal trade tax purposes. This leads to a so-called “minimum taxation” of 40% of the aforementioned excess in the respective tax year.

Withholding taxes

Corporations, whether with unlimited or limited liability to tax in Germany, are required to withhold taxes at source for the following types of payment and to remit such taxes to the tax authorities (the same applies to individuals and partnerships):

- Wage tax (“Lohnsteuer”) must be withheld by the employer and remitted to the tax authorities.
- Dividends (incl. deemed dividends), other profit distributions and income from a silent partnership or profit participating loan are subject to withholding tax at a rate of 21.1 % (26.375 % as from 2009).
- If applicable, the amount of withholding tax on payments to foreigners depends on the double taxation treaty (DTA; “Doppelbesteuerungsabkommen” = “DBA”).

According to the EU Parent-Subsidiary-Directive the withholding tax rate on dividends to a parent company in another EU member state can be reduced down to 0 %. Please note that anti-avoidance legislation requires certain conditions to be met by the foreign parent company to be eligible for a reduction of withholding taxes.

Solidarity surcharge

Since 1995, corporation and income tax in Germany has been subject to a solidarity surcharge ("Solidaritätszuschlag"). The solidarity surcharge is levied on the assessed amount of income or corporation taxes, income or corporation tax prepayments and withholding taxes. The rate of the solidarity surcharge is 5.5 %. The tax rate for corporations of 15 % is therefore increased by the solidarity surcharge to 15.825 % (15 % plus 5.5 % of 15 %). If, however, a tax treaty is in place which reduces the withholding tax on dividends, no solidarity surcharge can be levied upon the withholding tax. The aforementioned effective tax rates have always been calculated considering the solidarity surcharge.

Personal Taxation

Income tax

Individuals are required to pay individual income tax ("Einkommensteuer"). The tax year for income tax purposes is the calendar year. The tax liability of an individual depends on his residence. Citizenship is not a relevant factor. According to the concept of unlimited liability to tax, individuals resident in Germany are subject to income tax on their world-wide income. The status of unlimited liability to tax is also relevant for various tax allowances and filing options (e.g. joint returns for married people, child benefit payments, child allowances).

Residents are subject to income tax on seven categories of income:

- income from agriculture and forestry
- income from a trade or business
- income from self-employment
- income from employment
- income from capital investment (for assets acquired after Dec 31st, 2008 also capital gains)
- income from real estate and leasing activities
- other sources of income

Other income includes annuities, certain gains from speculative transactions (e. g. gains from the disposal of real property within 10 years after acquisition), occasional activities and rent of movable property. Income which is not covered by one of the seven categories is not taxable.

In order to determine the total amount of taxable income on a calendar-year basis, the amounts of income from the different categories must be calculated separately. For the first two categories of income (from agriculture and forestry/from a trade or business), the normal method of computing the gross income relevant for income taxation is the accrual method based generally based on German GAAP. According to this method, the relevant gross income is the difference between the net worth of the assets pertaining to each category of income at the end of the proceeding compared to the current assessment period. In the case of income from agriculture and forestry or trade or business where the annual profits do not exceed € 30,000 and sales revenue does not exceed € 500,000, the "net income method" maybe used. Under this method, the taxable income is computed by reducing the gross income by income-related expenses in accordance with a cash receipts and disbursement method. Business related expenses are generally deductible under both methods.

Net income from agriculture and forestry, from a trade or business and from self-employment must be determined by deducting business expenses from gross receipts.

Net income from employment, investment income, rental income and certain other income is determined by deducting any expenses that are incurred to produce, maintain and safeguard that income (income related expenses) from gross receipts (cash accounting method). For employees, these expenses include commuting expenses, tools, work clothes, certain membership dues and certain away-from-home expenses. In case of rental income, interest expenses, depreciation and other related expenses can be deducted.

The basic level of tax-exempt income ("Grundfreibetrag") is € 7,664. For married tax payers (joint filing), the basic level of tax-exempt income is doubled.

Within a taxation period, earnings and losses can be fully offset against each other. If a loss still exists for an assessment period, it can be used to offset income in other assessment periods. The first option is to carry the losses back into the preceding year, but only to a maximum of € 511,500 (double in case of joint filing). If a loss still exists after the carry-back, it can be carried forward to future assessment periods to a maximum of € 1 million (double in case of joint filing). To the extent the loss carry forward exceeds € 1 million, it can only neutralise 60 % of the remaining positive taxable current income. Any remainder is carried forward further. Individual income tax is imposed at progressive tax rates depending on the amount of taxable income. In 2008, tax rates of 0 % up to 47.475 % are levied. The top tax rate of 47.475 % is levied on an annual taxable income exceeding € 250,000.

Withholding tax on investment income

Investment income, in particular interest and dividend income, is subject to a withholding tax on investment income ("Kapitalertragsteuer") at a rate between 10 and 35 %, which can be credited against domestic income tax.

If applicable, the amount of withholding

tax on investment income to be paid by foreigners depends on the double taxation treaty ("DTA" – "Doppelbesteuerungsabkommen – DBA").

Other Taxes

Stamp Duty

There is no stamp duty levied in Germany.

Value Added Tax (VAT)

VAT ("Umsatzsteuer") applies to supplies of goods and services which an entrepreneur delivers or renders, for consideration (monetary or non-monetary) within Germany. It also applies to the importation of taxable goods and services (import turnover tax – "Einfuhrumsatzsteuer") which are subject to the same taxes as domestic products and services.

Since 2007, the standard rate for supplies of goods or services taking place in Germany has been 19 %. Certain goods and services (e.g. books, newspapers and food) are subjected to the reduced rate of 7 %.

Certain goods and services are either zero-rated for VAT (e.g. export of goods to non-EU destinations) or exempt from VAT (such as medical services and real estate supplies). The latter supplies do not qualify for an input VAT deduction.

A German entrepreneur is normally allocated a single tax reference number for all taxes including VAT. Furthermore a VAT identification number is issued for each registered entrepreneur by the Bundeszentralamt für Steuern (www.bzst.bund.de).

In general, an entrepreneur has to issue an invoice showing VAT due on a supply, which becomes due to the tax authorities. Most German entrepreneurs must submit a preliminary VAT return to the tax authorities on a monthly basis (under certain circumstances, such VAT returns are only requested quarterly) and

pay the net VAT amount due to the tax authorities at the same time. The normal deadline for submission and payment is the 10th calendar day after the end of the calendar month. A permanent extension of time for filing and payment of 1 month is available, if the entrepreneur pays a deposit of 1/11 of the preceding tax year's VAT liability. In addition, an annual VAT return has to be filed for the calendar year, summarising the information already reported in the preliminary monthly returns and correcting eventual areas. This annual return must be submitted by May, 31st of the following year (December 31st, if tax adviser is employed).

In cases of intra-EU supplies, a so-called EC Sales List ("Zusammenfassende Meldung") must be completed for each calendar quarter and submitted to the tax authorities within the same deadline as agreed for the submission of preliminary VAT returns. The EC Sales List must show the VAT identification number of the recipient of the goods and the value of the intra-EU supply made to the recipient.

Foreign entrepreneurs not registered for VAT in Germany can attempt to recover VAT incurred in German purchases only if they do not supply goods or render services in Germany and if they do not have a permanent establishment there. When applying for a refund, foreign entrepreneurs must submit the form "USt 1T" (www.bzst.bund.de/003_menue_links/006_ust_verguetung/061_ausl_untern/index.html) along with the original VAT invoices from the German suppliers to the Bundeszentralamt für Steuern, Dienststz Schwedt, Passower Chaussee 3b, 16303 Schwedt/Oder within six months after the end of the year of supply.

Real Estate Transfer Tax

The transfer of Real Estate triggers Real Estate Transfer Tax (Grunderwerbsteuer) at 3.5 % of the purchase price or any value received in exchange for the property (4.5% in the city of Berlin).

If 95 % or more of the shares in a corporate holding real estate are transferred (directly or indirectly), the tax falls due, as well. There is no exemption for intra-group transfers/restructuring transactions. Likewise, the transfer of 95 % or more in a partnership triggers the tax as well.

As a consequence, restructuring and acquisition operations require thorough analysis of the underlying real estate portfolio.

Real Estate Tax

Real Estate Tax ("Grundsteuer") is an annual tax levied by German Municipalities on real property (land and buildings). It is payable by the owner of the property irrespective of residence. The tax is levied on the assessed value ("Einheitswert") of the property using the basic federal tax rate of 0.35 %. On the resulting base amount ("Steermessbetrag"), the municipalities apply their respective multipliers to arrive at the final tax due. The multipliers vary by municipality and maybe different for industrial or agricultural property. Average multipliers for industrial property range from 150 % to 600 %, depending on local circumstances.

Withholding Tax on Building/Construction Services

In order to fight tax evasion in the construction sector, a withholding tax regime ("Steuerabzug bei Bauleistungen") has been imposed. Service providers suffer a 15 % withholding on their gross invoice amounts, unless they can present an exemption certificate. The certificate is issued by the competent tax office upon application.

Other Taxes on Consumption

Numerous taxes are levied on the consumption of goods (tobacco, petrol, alcohol) and services (insurances, electric energy). Except for the tax on electric energy (Stromsteuer), they are not refundable. They are levied from the dealer and are not stated separately on the invoice.

HLB in Germany

how to contact us

Berlin

LKC Löwenau & Partner Steuerberatungsgesellschaft
Ahornallee 36
14050 Berlin
Tel: + 49(0)30 30 11 34 0
Fax: + 49(0)30 30 11 34 44
Email: berlin@lkc.de
Web: www.lkc.de

* Jörg Löwenau

HLB Dr. Klein, Mönstermann + Partner GmbH
Kurfürstendamm 237
10719 Berlin
Tel: + 49(0)30 3 19 91 76 18
Fax: + 49(0)30 32 77 77 50
Email: info@kmp-berlin.de

* Dr. Christoph Averdick-Bolwin
Hartmut Boberg
Klaus Dunkel
Walter Hinken

* Dr. Michael Joswig
* Dr. Heiner Mönstermann
* T Dr. Claus Niemann
* Dr. Hermann Schulte

Bielefeld

HLB Dr. Stückmann & Partner
Elsa-Brandström-Str. 7
33602 Bielefeld
Tel: + 49(0)521 2993 00
Fax: + 49(0)521 2993 05
Email: info@stueckmann.de
Web: www.stueckmann.de

Dr. Thomas Beckmann
Wolfgang Bredenpohl
Mario Dettmann
* T Dietmar Engel
Anna Margareta Gehrs
Lars Hammerschmidt
Sabine Holtrup
Dr. Ulrich Hüttemann

* Benedikt Kastrup
Katja Lewang
Bernhard Niehaus
Regine Schmidt
* T Arnold Chr. Stange
* Gregor Teipel
* T Wolfgang Zündorf

Bremen

Jantzen Emde Tjarks & Partner
Lise-Meitner-Straße 6
28359 Bremen
Tel: +49(0)421-36300-0
Fax: +49(0)421-36300-36
Email: office-hb@wp-jet.de
Web: www.wp-jet.de

Ulrich Emde
Thomas Jantzen
Jost-Peter Redeker

Michael Sackmann
Magnus von Buchwaldt

Offices also in Kiel (contact Magnus von Buchwaldt) and Stade (contact Jost-Peter Redeker)

Köln

HLB Treumerkur
Dr. Schmidt & Partner KG
Frangenheimerstr. 9
50931 Köln
Tel: + 49(0)221 510 20 27
Fax: + 49(0)202 459 60 60
Email: mail@treumerkur.de
Web: www.treumerkur.de

*Arvid Feuerstack

Wolfgang Wunderlich

Düsseldorf

HLB Treumerkur Dr. Schmidt und Partner KG
Königsallee 30
40212 Düsseldorf
Tel: + 49(0)211 3 55 87 48
Fax: + 49(0)202 459 60 60
Email: mail@treumerkur.de
Web: www.treumerkur.de

* T Wolfgang Niendieck
Dieter L. Schmidt

Peter von Woedtke

HLB Dr. Schumacher & Partner GmbH
Steinstraße 27
40210 Düsseldorf
Tel: + 49(0)211 86 32 69 0
Fax: + 49(0)211 86 32 69 99
Email: dsp@schumacher-partner.de
Web: www.schumacher-partner.de

Hans Aschwege
T Dr. Friedrich Helmert
Dr. Jörg Irllich
Dr. Dietmar Janzen
Dr. Michael Kaufmann
* Ernst Kreymborg

Norbert Pull
Heiner Röttger
Dr. Hans-Jürgen Schumacher
Hans-Hermann Schumacher
* Wolf-Achim Tönnies

Erfurt

HLB Dienst & Martini GmbH
Gotthardtstr. 18-19
99084 Erfurt
Tel: + 49(0)361 22 07 40
Fax: + 49(0)361 22 07 42 3
Email: dmerfurt@hlb-dienst-martini.de
Web: www.hlb-dienst-martini.de

Heinz –Peter Mertens

Brita von Rein

Flensburg

Nielsen, Wiebe & Partner
Wiking-Treuhand GmbH
Europastr. 33 a
24976 Flensburg-Handewitt
Tel: + 49(0)461 902 507 0
Fax: + 49(0)461 902 505 0
Email: info@nwup.de
Web: www.nwup.de

Marin Burmester
Stefan Drewniok
* Thomas Nielsen

* T Isolde Schulze
Fritz Wiebe

Frankfurt

HLB Dr. Dienst & Partner KG
Niederanau 25
60325 Frankfurt
Tel: + 49(0)69 95 68 09 0
Fax: + 49(0)69 95 68 09 33
Email: info@ddp-frankfurt.de
Web: www.ddp-frankfurt.de

Werner Höffling
T Angela Mrosek
Sascha Schmoll

Prof. Dr. W. Edelfried Schneider
Irmgard Volk
* Kay Zerfaß

Hamburg

Hamburger Treuhand Gesellschaft
Schomerus & Partner
Deichstr. 1
20459 Hamburg
Tel: + 49(0)40 37 601 00
Fax: + 49(0)40 37 601 199
Email: info@schomerus.de
Web: www.schomerus.de

Peter-Alexander Borchardt
* T Rainer Inzelmann
* Wieland Kirch
Thomas Krüger
Manfred Lehmann
Beate Desiree Lipski

Prof. Dr. Axel Mutscher
Prof. Dr. Bernhard Schwarz
Ingo Seewald
* Kai W. Voss
Victor v. Websky

Koblenz

HLB Dr. Dienst & Partner KG
Postfach 20 04 63
56004 Koblenz
Tel: + 49(0)261 40 66 0
Fax: + 49(0)261 40 66 190
Email: info@ddp-koblenz.de
Web: www.ddp-koblenz.de

Alfred Doll
Werner Höffling
* Heinz-Peter Mertens
T Doris Reifenrath

Ralf Reinart
* Prof. Dr. W. Edelfried Schneider
* Kay Zerfaß

München

HLB Linn Goppold Treuhand GmbH
Leopoldstr. 175
80804 München
Tel: + 49(0)89 179 093 0/093 39
Fax: + 49(0)89 179 093 90
Email: hlb@lgt-gmbh.net
Web: www.lgt-gmbh.net

* Gerhard A Goppold
Dr. Heinz Höffling

Dr. Werner Linn
* T Detlef Ortseifen

LKC Kemper, Czarske, v. Gronau, Berz
Forstweg 8
82031 München-Grünwald
Tel: + 49(0)89 546 70 10
Fax: + 49(0)89 546 70 140
Email: gruenwald@lkc.de
Web: www.lkc.de

* Dr. Stefan Berz
Stefan Czarske

T Nicolas Kemper
Dr. Franz-Stephan v. Gronau

Münster

HLB Dr. Schumacher & Partner GmbH
Piusallee 121
48147 Münster
Tel: + 49(0)251 280 80
Fax: + 49(0)251 28 08 280
Email: info@schumacher-partner.de
Web: www.schumacher-partner.de

Hans Aschwege
T Dr. Friedrich Helmert
Dr. Dietmar Janzen
Dr. Michael Kaufmann
* Ernst Kreymborg

Heiner Röttger
Dr. Hans-Jürgen Schumacher
Hans-Hermann Schumacher
* Wolf-Achim Tönnies

Nürnberg

HLB Dr. Stürzenhofecker- Hacker-
Dr. Hußmann OHG
Lohengrinstr. 2
90461 Nürnberg
Tel: + 49(0)911 94 977 70
Fax: + 49(0)911 94 97 74 5
Email: Info@shh.de
Web: www.shh.de

* Roland Freund
Harald Hacker

* T Dr. Peter Hußmann
* Günter Kaindl

Osnabrück

HLB Dr. Klein, Dr. Mönstermann +Partner GmbH
Möserstr. 8
49074 Osnabrück
Tel: + 49(0)541 331 510
Fax: + 49(0)541 331 5140
Email: info@kmp-osnabrueck.de

* Dr. Christoph Averdiek-Bolwin
Rainer Bisgen
Hartmut Boberg
Klaus Dunkel
Walter Hinken

* Dr. Michael Joswig
* Dr. Heiner Mönstermann
* T Dr. Claus Niemann
Dr. Hermann Schulte

Offices also in Berlin (contact Dr. Schulte) and Georgsmarienhütte (contact Dr. Averdiek-Bolwin)

Saarbrücken

HLB Förderer, Keil & Partner
Blücherstr. 25
66119 Saarbrücken
Tel: + 49(0)681 58 60 90
Fax: + 49(0)681 58 60 924
Email: info@foerderer-keil-partner.de
Web: www.foerderer-keil-partner.de

Carl E. Haury
Helmuth Lehr
Heinz Joachim Maier

Dr. Hanns Müller
T Thomas Salz
* Dr. Hartmut Schenk

Stuttgart

Dr. Daiber & Partner
Audit Control GmbH
Untere Waldplätze 31
70569 Stuttgart
Tel: + 49(0)711 68 79 40
Fax: + 49(0)711 68 79 44 4
Email: info@daiberpartner.de
Web: www.daiberpartner.de

Dr. Karlheinz Autenrieth
* Dr. Hans-Joachim Daiber
T Ulrich Kunz

Herbert Mauthe
Hermann Wild

Wuppertal

HLB Treumerkur Dr. Schmidt & Partner KG

Hofkamp 24

42103 Wuppertal

Tel: + 49(0)202 459 60 0

Fax: + 49(0)202 459 60 60

Email: mail@treumerkur.de

Web: www.treumerkur.de

* Clemens Dornseifer


* Arvid Feuerstack

T Wolfgang Niendieck

* Dieter L. Schmidt



National Secretariat · Steinstrasse 27 · 40210 Düsseldorf · Germany
Telephone +49 (0)211 323 91 93 · Fax: +49 (0)211 323 91 95 · Email: hlb@hlb-treuhand.de
Web: www.hlb-treuhand.de

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