

Setting up in Hamburg

Guide for Foreign Investors



AXEL NEELMEIER
RECHTSANWALT

a.neelmeier@snb-law.de

DR. MARK-A. HUTH
RECHTSANWALT

Baumwall 7, 20459 Hamburg
Tel. +49/40/369796-15
Fax +4940/362088
www.snb-law.de

m.a.huth@snb-law.de



1. Introduction

Hamburg, being located in the heart of Europe and offering a highly developed infrastructure and highly trained staff, is among the prime targets for foreign Investors who are considering to set up their business within Europe. With approximately 100 consulates, Europe's second largest harbor and more than 10.000 import and export companies, Hamburg is a flourishing trade center with numerous of business opportunities.

Having decided to invest in Hamburg, every investor has to decide upon the legal structure of his future business. Like other legal systems, the German legal system provides for various different types of business vehicles among whom a potential investor may choose. However, setting up a limited liability company ("GmbH") is by far the most popular investment form within Germany. Hence, this booklet will provide you with an overview about the legal structure of a GmbH (see no. 2 below), required documents and information for setting up a GmbH (see no. 3 below) and a brief description of the visa application procedure for the future general manager(s) and staff of such company (see no. 4 below). We will then proceed in introducing our law firm and its services in general (see below no. 5) before outlining our services with regard to the foundation of a GmbH (see below no. 6).

2. Legal structure of a GmbH

Setting up a GmbH is by far the most popular form of investment. The reason for this is the offered limitation of liability, the possibility to appoint non-shareholders as legal representatives of the company, relatively low requirements for financial accounting, comparatively low requirements for minimum registered capital and, in general, its high flexibility in terms of drafting Articles of Association and securing the shareholder's interests in the company.

The German law on Limited Liability Company's (GmbHG) has recently been subject to major amendments which have become effective on 01.11.2008. The procedure for setting up a GmbH has been simplified and shortened. Besides, a "Junior GmbH" ("Unternehmergesellschaft") has been introduced with a minimum registered capital of €1,00 only.

A GmbH is a legal entity with its own rights and obligations which can conclude contracts, possess assets, has to pay taxes and can be party to legal proceedings. Its liability is limited to its business assets, with a required minimum registered capital of at least € 25.000 (unless set up as a "Junior GmbH").

The highest authority of a GmbH is the shareholder's meeting where all shareholders of the company are represented and which has to decide on all

major issues such as the appointment and dismissal of the general manager, increase or decrease of capital, amendment of the company's Articles of Association (AoA), the liquidation of the company or any other matter stated in the AoA. Daily business is taken care of by the general manager(s) who will act as legal representative(s) of the company and who will have to follow instructions given by the shareholder's meeting. Besides, the AoA may provide for a supervisory board. However, according to the German Limited Liability Law a supervisory board is optional and no mandatory requirement.

3. How to set up a GmbH

a) Setting up a new company

The AoA of a GmbH need to be certified by a notary public. Foundation of the company and appointment of the general manager(s) will need to be filed with the commercial register. The court fees and notarization costs depend on the amount of the registered capital subscribed and will account for €900,00 approximately in case of choosing the minimum amount of €25.000,00. Foundation costs (e.g. costs for legal advisors, court fees and costs for notarization) may be paid directly from the registered capital.

For the notarization of the AoA the intended general manager will have to appear personally, whereas the shareholders may be represented by agents acting on their behalf upon presenting a

power of attorney (PoA). However, such PoA will have to conform to the legal requirements regarding formalities which need to be fulfilled (e.g. translation by sworn translator, notarization, legalization). The same applies for abstracts of the commercial register or business licenses of foreign legal entities who want to become shareholder of a GmbH.

The company will not become existing as a legal entity with limited liability until it has finally been registered with the commercial register. Hence, individuals acting on behalf of the company will be held liable personally for any debts occurred during this period.

Usually it can be expected that the process of notarizing and registration will take 2-3 weeks. Adding additional two weeks for preparing and providing the necessary documents (e.g. PoA, AoA) the company should be ready to start its business in 4-5 weeks as of today.

b) Buying an off-the-shelf company

The aforementioned foundation process might be unfavorable for those who want to start business as soon as possible and do not want to wait until the registration process is completed. In order to save time and to avoid the above named risk of personal liability, investors may decide to buy a ready-made off-the-shelf company. Such company is a readily registered GmbH with a registered capital of €

25.000,- deposited on a bank account held by the off-the-shelf company. Such company has never run any business and can be transferred within 24 hours by a notarized Share Purchase Agreement here in Hamburg.

After the transfer of shares has been notarized the investor can start business right away. The change of the company's name, its business scope and AoA can be arranged while already running operations. The changes will approximately be registered within 2- 3 weeks after notarization.

4. Visa application procedures

Usually the process of setting up is accompanied with visa application procedures for the foreign legal representative(s) and staff of the company. The process is rather complex. Hence, legal advisors are not only to be recommended for the foundation process of the company but also with regard to the visa application procedures. Especially for those foreigners who have to apply for their visas from abroad, it will be very helpful to have a strong partner to look after their application procedures while being worked on by the German immigration authorities. Mistakes at the initial stage may result in great difficulties at least when an extension of the required working visas becomes necessary.

5. Our law firm

SCHULZ NOACK BÄRWINKEL is a medium-sized, highly specialized law firm with more than 70 years of experience in commercial law. With our profound knowledge and commercial understanding we provide legal advice at the highest level. Our areas of practice range from Energy, IT/IP, Construction and Real Estate to Banking, China and Corporate Issues. We run three offices, two in Germany (Hamburg and Rostock) and one in Shanghai (China) and are well accustomed with cross border transactions.

Our partner Mr. Axel Neelmeier is in charge of our Corporate Desk since many years. He has given numerous lectures on various corporate issues and is the author of several corresponding publications. A further member of the Hamburg Corporate Desk is Dr. Mark-Alexander Huth. He is focused on commercial and corporate law, including related fields of law.

For more details about the firm you are kindly invited to visit our website at

www.snb-law.de

Areas of practice:

- Setting up in Germany and all consecutive Corporate Affairs
- Mergers & Acquisitions
- International Trade
- Real Estate

- Litigation and Arbitration
- Visa and Working Permits

6. Our services regarding Setting up in Hamburg

Our services include drafting of the AoA of the new company, checking the company's name with the authorities and arranging for notarization and registration of the company documents. We will assist your general manager during visa application proceedings until he successfully enters Germany, provide him with the necessary forms and advise on the filling of such forms. Furthermore, we will assist you in obtaining some rent subsidies for the new office, in opening a bank account and arranging hotel reservations.

The costs for our services will be charged with a lump sum. If you so request, the fees for our legal services can be invoiced to the new company. However, in such case we would charge an extra 19% VAT. Charging a foreign company would be free of VAT.

Our fees will not include court fees and notarization costs for setting up a new company.

7. Summary

It would be our pleasure to assist you in setting up in Hamburg or in any other legal issue you may wish to assign to us. Should there be any further questions regarding our services please do not hesitate to let us

know. We will be happy to answer your questions and meet you personally in our office.

Axel Neelmeier

Dr. Mark-Alexander Huth

SCHULZ NOACK BÄRWINKEL

Baumwall 7

D-20459 Hamburg / Germany

0049/40 / 36 97 96 16

0049/40 / 36 20 88

a.neelmeier@snb-law.de

m.a.huth@snb-law.de

www.snb-law.de