



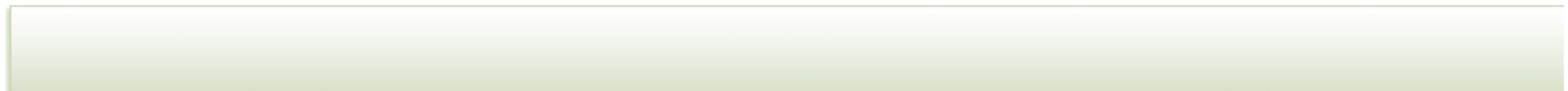
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Export of Services to the German Market

Legal Aspects of Business in
Germany

Riga, 25 May 2011





Opportunities for Latvian Companies in Germany

- Germany shows relatively high economic growth rates
- companies complain about lack of qualified staff
- aging population
- no restrictions for Latvian citizens with regard to EU-rights anymore



How to Organise your Business in Germany?

- I. Direct contractual relationship with customers in Germany
- II. Registered Branch Office
- III. Subsidiary / Joint Venture
- IV. Taxation
- v. Employment Law





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I. Contracts with German Customers





Applicable Law

- choice of law in the contract
- if no choice of law → law of the country, to which the contract has the closest connection
 - usually the country of the party, which performs the part characteristic of the contract, e.g. country of the seller, service provider, etc.
- restrictions apply with regard to contracts between businesses and consumers
- CISG: United Nations Convention on Contracts for the International Sale of Goods → part of German law if not excluded explicitly (Latvia has also ratified the convention)



Law of Contract

- freedom of contract (restricted by compulsory law, e.g. consumer protection regulations)
- in principle no formal requirements
 - ➔ a contract orally agreed on, is valid! However, as a matter of evidence, contracts usually should be in writing
 - ➔ partly notarization is required, especially in case of real estate transactions and for certain corporate transactions
- offer and acceptance make up a contract





How to Improve your Sales in Germany?

■ agents

- ➔ applicable law highly influenced by EU directive
- ➔ far reaching regulations for the protection of the agent, esp. claim for compensation in case of termination of the contract

■ distributor

- ➔ no explicit statutory regulation, partly courts refer to agency law

■ representative office





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II. Registered Branch Office





Registration with the Commercial Register

- possible for any business person or business company with a branch office in the respective city
- only compulsory, if you have reached a certain organisational level
- usually bank account of branch office required (whereas banks often require registration of the branch office for opening an account)
- considerable formalities to deal with → in the long run, mostly setting up a subsidiary is the better choice



Working with a Registered Branch Office

- party of contracts concluded will always be the main company
 - ➡ full liability of the main company
- registration in Germany is supposed to provide reliable information for customers and business partners





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III. Subsidiary/Joint Venture





Legal Form

Corporations

- GmbH = Gesellschaft mit beschränkter Haftung (limited liability company)
- AG = Aktiengesellschaft (stock cooperation)
- SE = societas europaea (European stock corporation)
- KGaA = Kommanditgesellschaft auf Aktien (partnership limited by shares)
- Genossenschaft (cooperative)

Partnerships

- GbR Gesellschaft bürgerlichen Rechts (non-trading partnership)
- Partnerschaftsgesellschaft
- OHG = Offene Handelsgesellschaft (commercial partnership)
- KG = Kommanditgesellschaft (limited partnership)
- special form: GmbH & Co. KG



Corporations

- liability limited to the assets of the company
- legal person
- possibility of a „one-man-corporation“
- subject to corporation tax



Most Common Form for Foreign Investors: GmbH

- minimum capital: EUR 25.000,00 (of which a minimum of EUR 12.500,00 has to be paid in right away)
- registration in the commercial register
- notarization required for
 - founding the company
 - the transfer of shares



Alternative: UG (haftungsbeschränkt)

- „Mini-GmbH“
- no minimum capital
- compulsory accumulation of 25% of the profit until capital is increased to EUR 25.000,00
- no abbreviation of the term „haftungsbeschränkt“



Partnerships

- in principle: personal liability of partners
- easy foundation, esp. no notarization required
- KG: two types of partners
 - Komplementär (= general partner): full personal liability
 - Kommanditist (=limited partner): liability limited to contributed capital, if registered
- taxation directly on the level of the partners
 - ➔ GmbH & Co. KG often used instead of GmbH for tax reasons





European Legal Forms

- European Court of Justice allowed legal forms of other EU-countries to be used instead of national legal forms
- English Ltd. has become quite popular for a while among German founders
- since introduction of UG (haftungsbeschränkt) no need to use Ltd.
- in theory you could use Latvian legal forms e.g. for your daughter company in Germany



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IV. Taxation





The Most Important Tax Types

- Income Tax (Einkommensteuer)
- Corporation Tax (Körperschaftsteuer)
- Trade Tax (Gewerbesteuer)
- VAT (Umsatzsteuer/Mehrwertsteuer)
- Real Estate Transfer Tax





Income Tax

- applies to every individual whose main place of residence is in Germany or who lives primarily in Germany
- rates:

EUR 8.004,00	increase of rate in little steps with increasing income	52.842,00	250.731,00
14 %		42 %	45 %

- solidarity surcharge: 5,5 % on the income tax amount assessed





Corporation Tax

- applies to corporations (legal persons), e.g. GmbH, AG as well as a branch/permanent establishment of a foreign corporation
- rate: 15 % of profit
- in case of distribution of profits: „partial income system“ to avoid double taxation burden → only 60% of distributed profits are subject to income tax on the level of the shareholder; if share is part of the private property, a final withholding tax of 15% on all of the distributed profits applies
- in case of a holding structure (corporation as a holding company, only 5 % of the profits distributed are subject to corporation tax)



Trade Tax

- applies to all business operations, no matter if run by a corporation or an individual
- independent freelancers such as doctors, architects, lawyers, or artists are exempt from the charge
- calculated on the basis of the operating profit according to a legally specified calculation method
- the amount of 3,5 % of the operating profit is multiplied with the „municipal multiplier“ (between 200 % and more than 400 %, depending on the municipality)



VAT

- framework is widely determined by EU-law
- normal VAT rate 19 %, but
 - 7 % for certain goods needed on a day-to-day basis, such as food, newspaper, or public transport
 - exemption for services e.g. in the healthcare and banking sector
- pre-tax allowance system (Vorsteuerabzug)
- reverse charge has been extended



Real Estate Transfer Tax

- applies in any case of a transfer of real estate
- rate: in most states 3,5 % of the purchase price; some states have increased the rate or plan to do so, e.g. Berlin (4,5 %)



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V. Employment Law and Social Security





Employment Contract

- in principle free choice of law, but certain restrictions
- in case of an employee of an Latvian company working only temporarily in Germany, Latvian law might even be applicable, if there is no explicit choice of law in the contract.
- stricter regulations in the construction sector
 - foreign employer have to adhere to collective bargaining agreements applicable in Germany → e.g. minimum wages
 - fines can be imposed in case of violation



Statutory Employment Law (Examples)

- working time
 - max. working time: 48 hours/week, 10 hours/day
 - work on Sundays and public holidays is generally prohibited
 - min. holiday: 20 working days
- protection against unfair dismissal
 - special protection if more than 10 employees and affected employee has been employed for more than 6 months
 - termination has to be „socially justified“
 - ➔ strict requirements, esp. in case of a termination for business reasons





The German Social Security System

- retirement pension insurance (19,9 %)
- unemployment insurance (3 %)
- health insurance 15,5% (8,2% employee/7,3 % employer)
- long-term care insurance (~2%)
- accident insurance (only contributions of employer depending on riskiness of jobs)
- ➡ if not regulated otherwise, employer and employee pay each half of the contribution
- ➡ contributions capped at a certain level of income



Low-Paid Employment Models

- „mini jobs“ → max. wage of 400 EUR per month
 - no income tax
 - social security flat-rate of 30 % of gross wage paid by the employer
- „midi jobs“ → wage between EUR 401 and EUR 800
 - government subsidizes the employee's social security contributions



Applicability of German Social Security Regulations in Case of Delegation/Posting of Workers

- in principal social security regulations of home country remain applicable; in an EU-context, if
 - existing employment contract in home country
 - delegation of worker to Germany
 - for a max. period of one year (under certain conditions extendable to two years)
- complex regulations → professional advice should be sought





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Thank you!

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