If you already have a foreign company and want to expand your business to Germany, founding a company is just one of many options: you could just do business there, open a dependent or an independent branch. However, a (daughter) company has many advantages and here is how to choose the right legal entity for your German baby:

Choosing the legal entity for your business is like picking a bride: be careful, think long-term and of all the costs and potential disasters that a divorce can bring upon you.

First of all: maybe you have already founded a business unintentionally.

Becoming a founder in Germany is easier than you may have thought: maybe you founded a GbR. If you did, go ahead and get a partnership contract.

But even if you have a GbR going, you should get out of it as soon as you can: GbR partners are 100% liable with their own assets and income.

Third: Now pick it for real

Factors:

- tax: losses, Verrechnung anderer Einkünfte, GewSt
- costs
- liability
- ownership
- management
- appeal to investors

Here is a short overview over the most common legal entity types:

1. Partnerships
- GbR
- OHG
- KG
- GmbH & Co. KG

2. Incorporated companies

- GmbH
- UG (Mini-GmbH)
- AG

The basic difference between incorporated companies and partnerships is that only incorporated companies are legal entities of their own and do not depend on the identity of its shareholders. Partnerships however highly depend on the close relationship between its partners and therefore, by default, end upon one partner's exit. Of course in most cases the articles of partnership stipulate the contrary, which is one good reason for fix your articles in written form.

The main difference between a GbR and the OHG is the scale of its business: while a GbR is automatically formed whenever several people join to fulfil a common purpose, the OHG's purpose has to be a business on a commercial scale. Therefore, when a GbR operates a business that requires accounting due to generating much revenue (> 100.000 Euro per year), it automatically becomes an OHG and needs to be registered with the commercial register (Handelsregister).

A KG is a OHG with two sorts of partners: the general partners and the limited partners. The general partner is liable with his private assets and income, the limited partner is more of an investor and only liable with his fixed liability contribution. Therefore, the KG is very common, especially in the form of a GmbH & Co. KG: here, the general liable partner is a GmbH or even a UG and is basically the best of both worlds. Lots of investment companies are GmbH & Co. KGs.

Out of the incorporated companies the standard used to be the GmbH (Gesellschaft mit beschränkter Haftung, Limited Liability Company). A couple of years ago the UG was introduced (Unternehmergesellschaft, Enterpreneurial Company). It is just a mini GmbH with a minimum share capital of 1 Euro instead of 25,000 Euro. Especially small companies nowadays choose the UG. The downside is that you have to use the firm UG (haftungsbeschränkt) meaning limited liability. Having the limited liability annex and the low minimum share capital, the UG is less accepted than the GmbH, especially among creditors and conservative business partners. However, the low costs and capital input makes it the weapon of choice for tight budgets. In doing so, it has swept away the British Limited Company from the German market within a year of its introduction. The AG (Aktiengesellschaft, stock company) has a high threshold for being incorporated. Its main advantage is its access to the stock market: so if you want an IPO and have lots of cash, go for the AG. However, most companies start off with a (mini) GmbH and (years later) transform into an AG before going public.

Feedback?

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