

# Germany

## 1. Aktiengesellschaft

*Brief overview: Establishment and structure of the company*

### Minimum capital

50,000 euro

### Organisation

#### 1) General meeting (of shareholders) §§ 118 ff. AktG

Responsibilities include

- Appointment of Supervisory Board members with exception of employee representatives on Supervisory Board
- Decisions on disposal of company profits
- Formal approval of members of the Board and Supervisory Board
- Election of auditor
- Amendments to statutes
- Decisions on liquidation of the company
- Capital procurement and capital reduction measures
- Appointment of auditors to check formation processes or managerial procedures
- Liquidation of company
- Right of approval in the event of the Supervisory Board refusing approval (§ 111 (4) AktG)

#### 2) Board of Management (§§ 76 ff AktG)

Responsibilities include

- Managing the company
- Representation of the company in and out of court
- Obligation to report to Supervisory Board at statutory intervals on planned company policy and other fundamental questions relating to future management + profitability of the company, particularly shareholders' equity
- business, particularly turnover and company situation
- business transactions that could be of particular importance for the profitability of the company
- Obligation to report to Supervisory Board for other important reasons
- Obligation to maintain the necessary commercial records

**Personnel Director** (§ 33 MitbestG): A member of the Board of Management with equal rights responsible for personnel issues

#### 3) Supervisory Board (§§ 95 AktG)

Responsibilities include

- Comprehensive rights to supervise and scrutinise management procedures
- Right to inspect company books and records
- Inspection and approval of the year-end financial statement

- Commissioning the auditors
- Right to employ outside experts
- Right to call a General Meeting if the interests of the company so dictate
- in some cases, right to approve certain business transactions (as laid down by statutes or Supervisory Board; typical examples are: important investment decisions, larger scale rationalisation measures, closures, co-operation agreements, acquisition and sale of shares in other companies, taking out of loans over a certain size)

Frequency of meetings: in general, quarterly

Members of the Supervisory Board - including employee representatives - can receive payment for their activities (§ 113 AktG)

*Brief overview: Employee participation at board level*

**Yes.**

Various legal regulations, dependent on the number of employees (co-determination in the iron, coal and steel industry excluded)

**1. Company Constitution Act**

(law on co-determination of employees of May 4, last amended on July 28, 2001.

**applicable to**

Aktiengesellschaften, Kommanditgesellschaften auf Aktien, Gesellschaften mit beschränkter Haftung and Erwerbs- und Wirtschaftsgenossenschaften **with more than 2,000 employees** (individually or in the Group)

**Total membership of Supervisory Board and employee representatives:**

- up to 10,000 employees: 12 members of Supervisory Board, of which 4 employee representatives and 2 union representatives
- between 10,000 and 20,000 employees: 16 members of Supervisory Board, of which 6 employee representatives and 2 union representatives
- more than 20,000 employees: 20 members of Supervisory Board, of which 7 employee representatives and 3 union representatives

**Election:**

- **of employee representatives:** by workforce directly or by delegates elected from within the workforce
- **of union representatives:** nominations from union represented within the company, election by workforce or delegates
- election for 4 years

**Rights:** The employee representatives and union representatives have the same rights and obligations as the shareholder representatives on the Supervisory Board; for these, see under Supervisory Board.

**Protection:** Employee representatives are in principle protected from discrimination and disruption or hindrance in carrying out their duties for the Supervisory Board.

**Duty of confidentiality:** Yes, in the case of confidential reports and consultations, as well as for industrial or company secrets.

## **2. Industrial Constitution Law 1952 (§§ 76-87)**

### **applicable to**

Aktiengesellschaften, Kommanditgesellschaften auf Aktien, Gesellschaften mit beschränkter Haftung, Genossenschaften, VVaG, **with more than 500 but fewer than 2,001 employees** (and also for Aktiengesellschaften with fewer than 500 employees, if registered before August 10, 1994 and not family-owned companies).

**Total membership of Supervisory Board:** Fixed by shareholders in the statutes or in the company agreement; total number must be at least divisible by three; of the total number 1/3 are employee representatives; where there are 2 or more employee representatives at least 2 must come from the company's operations. If women make up more than half the workforce, there must be at least one woman representative on the Supervisory Board.

### **Election of employee representatives:**

- by workforce
- Election for 4 years; statutes may provide for shorter term of office

**Rights of employee representatives:** the same rights and responsibilities as shareholder representatives, see under Supervisory Board.

**Protection:** Employee representatives are in principle protected from discrimination and disruption or hindrance in carrying out their duties for the Supervisory Board.

**Duty of confidentiality:** Yes, in the case of confidential reports and consultations, as well as for industrial or company secrets

## 2. Die Gesellschaft mit beschränkter Haftung

*Brief overview: Establishment and structure of the company*

### Statutory basis

law on limited-liability companies (GmbHG) in the version published 20 May 1898, last amended by Art. 3 of the “Gesetz zur Namensaktie und zur Erleichterung der Stimmrechtsausübung” of 18.01.2001

### Requirements for establishment

- one or more people
- legally certified company agreement (= statutes)
- entry into Commercial Register

### Minimum capital

25,000 euro

### Organisation

#### 1. Meeting of company members (§§ 45 ff GmbHG)

Responsibilities include

- Appointment and deselection of managing director
- Amendment to company agreement
- Approval of year-end financial statement and of disposal of net earnings
- Scrutiny and supervision of management
- Appointment of authorised signatories and agents

#### 2. Managing director (§§ 35 ff GmbHG)

Responsibilities include

- Management of company
- Responsibility to ensure proper accounting procedures
- Preparation of year-end financial statement and status report

#### 3. Supervisory board

A Supervisory Board is prescribed in a GmbH only if it employs more than 500 people.

The powers of the obligatory Supervisory Board are rather more limited than those of the Supervisory Board of an Aktiengesellschaft; rights include in particular:

- Appointment and deselection of managing director
- Supervision of management
- Right to demand reports
- Approval of certain business transactions
- Right to inspect company books and records
- Inspection of year-end financial statement and of profit distribution proposals and reporting duty to the Meeting of Company Partners

<i>Brief overview: Employee participation at board level</i>
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**Yes.**

Various legal requirements, depending on the number of employees (co-determination in the iron, coal and steel industry excluded).

### **1. Law on Co-determination**

(Law on Employee Participation of May 4, last amended on July 28, 2001)

#### **applicable to**

Aktiengesellschaften, Kommanditgesellschaften auf Aktien, Gesellschaften mit beschränkter Haftung and Erwerbs- und Wirtschaftsgenossenschaften **with more than 2,000 employees** (individually or within Group)

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**Rights:** Employee representatives and union representatives have the same rights and responsibilities as shareholder representatives on the Supervisory Board; see rights under Supervisory Board

**Protection:** Employee representatives are in principle protected from discrimination and disruption or hindrance in carrying out their duties for the Supervisory Board.

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*Source: Büggel, A. (2003) Company law and existing legislative provision for employee participation in the EU member states, in R. Köstler and A. Büggel, The European Company and Company law and existing legislative provision for employee participation in the EU member states, Brussels: ETUI. Report 79 (to order the whole report, please send an e-mail to [etui@etuc.org](mailto:etui@etuc.org); price: €20).*