Supporting Go-To-Market with bespoke legal and recruitment advice

When entering a foreign country you will apart from being exposed to a foreign business culture be faced with a number of different challenges and questions, ranging from finding and contracting the right people to setting up the legal entity that suits your commercial and financial purposes best.

With the right partners by your side you will be able to head start your business without the risk of running into any unforeseeable legal and personnel issues.

Based on the good experience that our clients and ourselves have made we recommend Robert Walters for any and all recruitment advice for your Go-To-Market activities while we will be able to cover all your related legal needs when entering a new market.

Oppenhoff: Better answers in a changing world

We are one of the leading independent German law firms with over 110 years of experience in dealing with international and domestic clients. We advise on all legal aspects when entering the German market.

For this purpose, Oppenhoff sets up an experienced team of experts with a profound knowledge about the particularities especially related to Corporate, Tax and Employment Law and all other legal aspects which will or may become relevant. Our legal experts are experienced in helping companies setting up business in Germany and will be happy to support you with all your legal queries and challenges to help you succeed.

Oppenhoff

1. German Labour Law Requirements - Who to hire?

Depending on the business model of your company, you may decide to hire interim professionals, full-time or part-time employees, temporary workers or a combination of these.

- Interim professionals are workers who themselves are responsible for the handling of their own taxes and insurance. Your company may thus only utilize and pay their services when needed.
- A full-time or part-time employee will, in contrast to an interim professional, place a number of obligations on the employer who must, among other things, deduct taxes and insurance premiums from their pay, give them a certain amount of vacation days each year, and observe the laws that protect them from arbitrary dismissal.

  The premiums for the German national retirement, unemployment and health insurance programs are borne equally by the employer and the employee. Half of each premium is deducted from the employee's pay, the other half will be added to it by you and then sent to the appropriate agency and health insurance company.
- Temporary Worker Agencies can be utilized as well.

In all three scenarios, different legal requirements have to be considered and the corresponding contract drafts have to be prepared. Ideally, the corporate company acting as contracting partner is already in existence when hiring personnel in order to avoid the subsequent transfers of legal contracts to a newly established company.

In addition, companies could consider engaging a payroll provider in order to comply with statutory tax and social security obligations.

Requirements when hiring foreign employees or workers

While nationals of Member States belonging to the European Union (EU) or the European Economic Area (EEA) are not subject to any restrictions regarding work permits, other (third-party) country nationals need a residence title for taking up employment in Germany. The intentional or negligent employment of foreign workers as employers without the required residence permit can result in severe sanctions and should thus always be checked.

Registration obligations?

Once you intend to hire employees in Germany, you must apply for a company number from the Federal Employment Agency in order to officially register as an employer. This number is then needed, among other things, to pay social security contributions. In addition to social insurance, employees must also be registered with the statutory accident insurance. This pays for accidents at work and occupational diseases. The contributions are paid by the employer. Last but not least, the tax office also expects a report on the new employees. This is because the employer must withhold wage tax for them. In this context it is often also considerable to engage a payroll provider in order to comply with statutory tax and social security obligations.

Renting office space or offering home office/mobile work arrangement?

When start-ups first enter the German market, often home office arrangements are made with new hires. However, you should carefully consider in advance from which workplace employees should work, not only at the beginning of their employment, but also after the enterprise has grown. Once home office arrangements have been introduced, they cannot be easily abolished. Therefore, time limits for such regulations should be considered, and in any case written contractual agreements should be made, because once home office models are "lived", the employees can at some point acquire a right to it that cannot simply be abolished later on. Furthermore, the equipment and cost reimbursement obligations of the company differ depending on whether you agree to a mobile office or home office. All this should be reflected in advance.

Company car for private use?

Furthermore, when starting your business in Germany often the question comes up whether to provide your new hire with a company car. If a company car is used not only for business purposes but also for private purposes, this is a taxable imputed income to be considered in terms of tax and social security contributions. Since electromobility is actually promoted in Germany, this results in considerable tax relief for the private use of these type of company cars. For hybrids and electric cars, the imputed income is halved. This also saves social security contributions in addition to wage tax. In summary, there are different advantages depending on the model for taxation, which make more or less sense depending on the company.

These are only some of the typical first labour related questions a start-up will face when entering the German market.

2. Establishment of corporate entity

In Germany, the GmbH (*Gesellschaft mit beschränkter Haftung*, which translates to 'company with limited liability') is the most common corporate entity. It is an entity which shares much resemblance to the private limited company in the United Kingdom and the limited liability company in the United States.

The GmbH's main characteristics are:

- Own legal personality
- No requirements for managing directors to hold a share in the capital
- No personal liability for the shareholders
- Voting rights of the shareholders are always based on equity interest

The GmbH, under German law, must have a minimum statutory capital of 25 thousand euros. The standard process of incorporation can take up to four weeks and there is the possibility to amend the articles of association as needed for internal governance requirements.

The GmbH's corporate bodies consist of the:

- Shareholders' meeting
- Managing directors
- Supervisory board (optional)

The representation of the GmbH is done by managing directors (sole or joint power of representtation)

3. Regulatory requirements

3.1 Employment Law

- Conclusion of employment agreements
- Transfer agreements regarding employment agreements

3.2 Corporate

- Information to the relevant chamber of industry and commerce (*Industrie- und Handelskammer*)
- Registration of ultimate beneficial owner in German transparency register

3.3 Public Law

- Trade registration (*Gewerbeanmeldung*)
- Further registrations/prohibitions with regard to business operated by the GmbH

3.4 Tax

- Notification letter to the tax office in charge
- Notification letter to the city of the registered office regarding trade tax (*Gewerbesteuer*)
- Application for VAT-ID-No.

3.5 Data protection (GDPR) [Fintech/ Insurtech]

- Application to certain authorities (*Bundesanstalt für Finanzdienstleistungsaufsicht*)

3.6 Miscellaneous

- Drafting of official stationery / email of GmbH with mandatory information
- Conclusion of financing agreements, lease agreements, transfer agreements regarding lease agreements, agreements with local tax advisers/accountants, insurance agreements, internet domain, website etc.

5 tips for making functional hires

The first functional hire in each area of your business is essential for establishing your company culture and setting your business in the direction of success. Here are 5 things to keep in mind when hiring Go-To-Market professionals:

1. **Employer branding is incredibly important in this phase, since you don't yet have an established reputation.**
   The first thing a potential candidate will do is gather all the information they can about you online. Don't underestimate the value of a company mission statement page. Consider sharing your company's origin story, particularly if you built the business to solve something that was impacting you personally. Just as people want to buy from people and not an "entity", people also want to work for other good people who share common values.

2. **Understand that in the Go-To-Market phase, you are perceived as a high-risk (but potentially high-reward) opportunity.**
   Every founder believes their product or service is the best new thing to hit the market, but convincing top talent at a prestige brand like Google, Apple, or Airbnb to leave their high-comp strategic role requires more than just passion. Developing a strong elevator pitch now will be important for the interview process later. Open every interview and close every interview with this pitch and be sure you have buy-in on your vision before pursuing a new candidate.

3. **Define how the success of a hire will be measured.**
   Really sit down to assess what you need. That might be new traffic, new business generated, growth or profitability. Defining that in a clear way will help you identify candidates that have a proven track record for achieving those goals.

4. **Always be building a talent pool.**
   In the beginning, lean on personal referrals and advisor networks. Once you have exhausted personal networks, you may consider posting your roles publicly. Lean on your recruitment partner to assist with job descriptions, head hunting and sourcing.

5. **Avoid homogeneity.**
   You can't build a 100-person team and then later decide to incorporate a diversity and inclusion program. If you hire based solely on referrals, or only choose people who "remind you of your younger self", you will ultimately create a stagnant environment. Build your team with diversity and inclusion in mind from the start, and you will have better engagement, employee retention, creative problem solving, and higher profitability. It's been proven time and time again!

We help you to succeed!

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