

Our German Sub

Information for US parent companies and home offices with German operations

An MLawGroup Publication

Issue 01/2007

2007 has brought new mandatory requirements for German businesses and companies. Significant new regulations include mandatory requirements for

- business correspondence (see no. 1 below) and
- disclosure of annual statements (see no. 2 below).

1. Mandatory requirements for business correspondence

Since January 1, 2007 German businesses and companies are required by law to comply with mandatory formal requirements regarding business correspondence sent by e-mail.

All mandatory information, which so far only had to be given on printed business letters sent by mail or fax must now also be provided in e-mails.

Please note that these requirements apply for any German business and company, regardless of its potentially foreign shareholder structure.

1.1 The following information must be given on any business correspondence of a German limited liability company (GmbH):

- Corporate form and registered office of the company,
- the commercial register the company is registered at and the number under which the company is registered,
- all managing directors (with family name and first name).

1.2 The following information must be given on any business correspondence of a German stock corporation (AG):

- Corporate form and registered office of the company,
- the commercial register the company is registered at and the number under which the company is registered,
- all members of the managing board and the chairman of the supervisory board (with family name and first name); the chairman of the management board must be indicated as such.

1.3 The following information must be given on any business correspondence of a German partnership (KG or GmbH & Co. KG):

- Corporate form and registered office of the company,
- the commercial register the company is registered at and the number under which the company is registered.

Please do not hesitate to contact us for any comments you might have or if you require more detailed information.

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In case none of the shareholders is an individual the following additional information must be given:

- Corporate names of the shareholder companies and the respective information for a GmbH or an AG as described under 1.1 and 1.2 above.

1.4 The following information must be given on any business correspondence of a German branch office or permanent establishment of a foreign home office (*Zweig-niederlassung, Betriebsstätte*):

- Commercial register the branch office or permanent establishment is registered at and the registration number,
- corporate form and registered office of home office,
- corporate register and company number of home office
- all officers and chairman of board of directors of home office (with family name and first name).

Please note further that any invoices of a business or company, sent by mail, fax or e-mail, also need to show the tax number of the business or company.

In case of non-compliance significant fines of the commercial court can be imposed on the management of the business or the company.

2. Mandatory requirements for filing of annual statements

Effective as of January 1, 2007 German companies (most importantly GmbH, AG and KG, hereinafter “corporations”) are required to file the annual statements and certain other information to the electronic Federal Gazette. The filing requirements apply to all annual statements for business years beginning after December 31, 2005. The extent of the documents and information required to be filed depends on the size of the corporation:

2.1 Small corporations (see 2.3 below):

- Balance sheet (*Bilanz*) plus
- Attachment (*Anhang*)

2.2 Mid-sized and large corporations (see 2.3 below):

- Balance sheet (*Bilanz*)
- Profit and Loss statement (*Gewinn- und Verlustrechnung*)
- Attachment (*Anhang*),
- Report of Management (*Lagebericht*),
- Report of Supervisory Board (*Bericht des Aufsichtsrats*),
- Auditor’s Certificate (*Prüfungsvermerk des Abschlussprüfers*)
- Proposal for Resolution of Allocation of Profits/Losses (*Gewinnverwendungsvorschlag*).

2.3 Small, mid-sized and large corporations are defined as follows:

CRITERIA CATEGORY	TOTAL ASSETS	SALES REVENUES	EMPLOYEES
Category depends on the fulfillment of at least two of the three Criteria.	After deduction of any losses exceeding equity (Sect. 268 (3) German Commercial Code) in Thousands	During the last 12 months before balance sheet date in Thousands	Annual average
SMALL	More than 4,015	More than 8,030	More than 50
MID-SIZED	4,015 up to 16,060	8,030 up to 32,120	50 up to 250
LARGE	More than 16,060	More than 32,120	More than 250

All filings must be made electronically (www.ebundesanzeiger.de, *Bundesanzeiger Verlagsgesellschaft mbH*).

Filings must be completed no later than 12 months after the end of the business year. For publicly listed corporations and corporations, which issue publicly listed securities filings must be completed no later than 4 months after the end of the business year.

In case of non-compliance with the filing requirements described above the commercial court may impose significant fines on the management of the company.
