



# **Simplified business forms in the context of small and medium enterprises – the German approach**

**UNCITRAL Colloquium Vienna, 16-18 January 2013**

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# I. Introduction

- Two-fold approach for the foundation and registration of SME
  - the **registered merchant** (“eingetragener Einzelkaufmann”)
  - the limited liability company “light” (“Unternehmergesellschaft haftungsbeschränkt = **UG**)



## II. The registered merchant

- **Procedure**

- Art. 1 sec. 2 Code of Commerce: “A business enterprise (...) shall be deemed to be a commercial business within the meaning of this Code if the firm name of the enterprise is registered in the Commercial Register. The entrepreneur is entitled, but not obliged, to effect registration pursuant to the provisions in force for the registration of commercial firm names.”



## II. The registered merchant

- **Legal effects and consequences**

Art. 5 Code of Commerce:

“If a firm name is registered in the Commercial Register, it cannot be asserted against a person invoking such registration that the business conducted under the firm name concerned is not a commercial business.”



## II. The registered merchant

- **Advantages**
  - business confidence
  - first impression of business
  - certain legal advantages (can give “Prokura”, a special commercial proxy provided for in the German Commercial Code)



## II. The registered merchant

- **Registration process**
  - Registration form (to be certified by notary)
  - Notarial application for registration with the Commercial Register (**online**)
  - Examination procedure by the Register Court
  - Registration of the registered merchant in the Commercial Register



## II. The registered merchant

- No fees for lawyers
- Notary fees: **21 EUR**
- Registration fee: **70 EUR**



## III. The UG (“LLC light”)

- **History:**

- Law on companies with limited liability of April 20, 1892 (still in force)
  - Limited liability company (“GmbH”)
  - Minimum capital requirement: 25.000 EUR (before: 50.000 DM)
- Minimum capital requirement proved to be too demanding for SME; registered merchant does not enjoy limited liability
- British “Limited” becoming increasingly popular with German entrepreneurs
- Result: In 2008 most comprehensive reform since 1892





## III. The UG

- **Introduction of the UG**
  - not a new legal firm; legislator wanted to facilitate entrance into a GmbH
  - UG is a GmbH to which only certain special provisions of the GmbHG (Act on German Liability Companies) apply
  - main difference: minimal capital requirement of only **1 EUR**



## III. The UG

- **Objectives of the reform of 2008**
  - to strengthen the international competitiveness,
  - to impede the misuse of German liability companies
  - to **facilitate the foundation** of a GmbH for company founders unable to raise the 25.000 EUR minimum capital requirements



## III. The UG

- **Main characteristics of the UG**
  - minimum capital requirement 1 EUR
  - limited liability (only share capital, no personal liability)
  - legal person having its own rights and duties
  - Represented by managing director(s)
  - minimal requirement of one natural person to found UG



## III. The UG

- **Foundation and incorporation of the UG**
  - Sample protocol (as annex to GmbHG)
  - Notarial protocol
  - Raise share capital (contributions in kind are not possible, only cash contributions; must be paid in full at the time of registration)
  - Notarial application for registration with the Commercial Register (**online**)
  - Examination procedure by the Register Court
  - Registration of the UG in the Commercial Register and announcement of the registration
- **Duration of process: approximately 1 week** (also possible within **24 hours** if entrepreneurs buys a shelf company)



## III. The UG

- **Facilitate entrance into a GmbH**
  - Share capital of the UG may amount to anything from EUR 1 to EUR 24.999
  - Underlying aim: facilitate the entry to a GmbH for founding entrepreneurs with low capital requirements
    - art. 5a sec. 3 GmbHG: the UG must create statutory provisions in its balance sheet which must include one fourth of the net profit for the year from which the loss carry-forward was deducted
    - the company should gradually save money until it has built up the minimum share capital required for a GmbH and then be able to become a “real” GmbH by way of resolution to increase capital (advantage: no formal change of corporate form necessary)
    - No period of time or obligation to transform UG into a GmbH



## III. The UG

- **The UG – a story of success**
  - 19,563 companies registered from Nov 1, 2008 – Nov 1, 2009
  - **76,377** companies registered up today



## III. The UG

- **Costs, fees, expenses**
  - No fees for lawyers
  - Notary fees: **20 EUR** (!) for outstanding legal advice and service (including, i.e. draft of a company agreement)
  - Registration fee: **150 EUR** (this high amount is due to European Court of Justice jurisdiction)



**THANK YOU FOR YOUR ATTENTION!**

**MERCI DE VOTRE ATTENTION!**