Germany: filing and publication of annual accounts

1. ARRANGEMENTS

The law on electronic commercial registers and registers of cooperative societies as well as the company register (EHUG) came into force on 1 January 2007.

This law also introduced changes affecting the publication of annual accounts of German companies.

Since 01.01.2007, annual accounts no longer have to be submitted to the commercial register but filed with the publisher of the German electronic Federal Gazette (elektronischer Bundesanzeiger), the Bundesanzeiger Verlagsgesellschaft mbH, and have to be published. This applies to all annual accounts which relate to the 2006 financial year or a subsequent financial year.

It is compulsory for every company to file and publish its annual account once a year.

The "Bundesanzeiger" (Federal Gazette), both in electronic form and in the partially remaining printed version, is a gazette containing official announcements and notices issued by the German Ministry of Justice. Besides official announcements and notices ("Verkündungen und Bekanntmachungen") issued by the Federal Government and mainly the federal ministries and other federal bodies, the Federal Gazette also contains announcements and notices of a judicial nature and relating to company and capital market law as well as the annual accounts of all companies which are obliged to file their annual accounts as required by law.

The electronic Federal Gazette (elektronischer Bundesanzeiger - eBAnz) is the platform for central announcements and notices and company reports of legal significance. Annual accounts must be filed with this body.

In addition, the administrator of the electronic Federal Gazette (elektronischer Bundesanzeiger), the Bundesanzeiger Verlagsgesellschaft, has also been commissioned to administer a new Company register. The company register (Unternehmensregister - UReg) is the central platform where company information of legal significance is stored. This is the centralised store for key company information which has to be published. Interested parties can access this information electronically.

1.1 WHICH COMPANIES HAVE TO PUBLISH?

The following companies are still obliged not only to prepare their annual accounts but also to publish them:

- all companies limited by shares, i.e. all public limited liability companies and partnerships limited by shares and above all also all private limited liability companies
- cooperative societies
- partnerships without a natural person as a personally liable partner
- branches of certain foreign companies limited by shares, above all limited companies
- irrespective of their legal form, credit institutions, institutions which provide financial services, insurance companies and pension funds.

Any company or other business entered in the register is required to prepare and publish annual accounts

- irrespective of the object of the business,
- irrespective of whether it has yet commenced business operations or has ceased operations and
- irrespective of whether the business aims to make a profit; i.e. non-profit organisations are also required to do so.

1.2 CATEGORIES ACCORDING TO SIZE AND DOCUMENTS TO BE PUBLISHED

It is the size of a business that determines what documents have to be filed with the electronic Federal Gazette.
1. Small companies limited by shares are those which exceed no more than one of the three criteria specified below:
   - balance sheet total: 4,840,000 EUR
   - turnover: 9,680,000 EUR
   - annual average of 50 employees.

2. Medium-sized companies limited by shares are those which exceed at least two of the three criteria specified under 1 but exceed no more than one of the three criteria specified below:
   - balance sheet total: 19,250,000 EUR
   - turnover: 38,500,000 EUR
   - annual average of 250 employees.

3. Large companies limited by shares are those which exceed at least two of the three criteria specified under 2. A company limited by shares is always regarded as large if it is active in an organised market. A business that belongs to one of the following special groups:
   - credit institutions
   - financial services institutions
   - pension funds
   - insurance undertakings
must publish its annual financial statements and reports in accordance with the provisions applying to large companies, irrespective of its size.

Large and medium-sized companies - whereby medium-sized companies in accordance with § 327 of the German Commercial Code can enjoy certain facilities regarding the content of individual documents - must file the following documents:
   - statement of financial position / Balance sheet
   - income statement
   - notes
   - management report
   - additional documents specific to the legal form (e.g. details of the appropriation of profits, Report of the Supervisory Board, Auditors' certificate etc.)

Small companies can make use of the facilities under § 326 of the German Commercial Code. That means that they only have to file and publish a balance sheet and notes.

1.3. ELECTRONIC FILING FOR ANNUAL ACCOUNTS

Annual financial statements must be filed with the Bundesanzeiger Verlagsgesellschaft electronically via "https://publikations-plattform.de".

The Bundesanzeiger Verlagsgesellschaft has a simple, user friendly method for filing annual accounts electronically. It involves uploading files via the Internet where you can choose between the data formats Word, RTF, Excel, PDF and XML XBRL files.

As an alternative to the above-mentioned upload forms, small companies can use input forms for filing annual accounts.

In order to be able to transmit annual accounts to the electronic Federal Gazette via the publication platform, businesses initially need to register. On completing the registration procedure, it is possible to enter a user name and a request for a password to be sent by fax, text message (SMS) or post.

An electronic signature is not required for filing annual accounts. The Federal Gazette has a secure Internet connection. For accounts and accountability and for financial reports, customers have the facility to send files for publication with a qualified electronic signature.

1.4. DEADLINES FOR FILING ANNUAL ACCOUNTS

Annual accounts must be presented to the partners first of all. Then they must be filed, in principle without delay, and at the latest 12 months after the last closing date. If the financial year coincides with the calendar year, the annual accounts for the 2009 financial year must be filed by the end of 2010 at the latest.

There is a shorter filing deadline of 4 months for capital market-oriented companies limited by shares.
This includes both listed companies and any companies that have issued other securities (e.g. debt instruments) that are traded on an organised market.

Failure to comply or to comply in full with the publication requirements may attract penalties, imposed by the Federal Office of Justice, ranging from EUR 2,500 to EUR 25,000.

1.5. ANNUAL ACCOUNT FILING FEES

In the footer line of the website "https://publikations-plattform.de" there is a link to the General Business Conditions and the current price list, where information is also to be found on the formats in which documents can be submitted and the charges due. There are different price models (with prices between 30 and 48 EUR) relating to different submission formats.

2. WAYS TO ACCESS INFORMATION RELATING TO ANNUAL ACCOUNTS

2.1. OVERVIEW OF PRODUCTS AND SERVICES

Users can search the whole database of the electronic Federal Gazette, annual accounts included, free of charge. Annual accounts are displayed as HTML pages and can be printed from the website.


National Bank of Belgium
Central Balance Sheet Office
May 2010

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Press release from 10 September 2010 from: https://www.ebundesanzeiger.de:

Huge success for online consultation of annual accounts
10.09.2010 – Several million sets of annual accounts already on the Internet. The number of annual accounts and number of times they are consulted keeps on growing.

Status quo since the EHU G Law
- The EHU G Law (on electronic commercial registers, cooperative society registers and the company register) has made a large contribution to better publicising of corporate financial statements in the Federal Republic, and also to greater market transparency.
- Since its entry into force on 1 January 2007, the total number of annual accounts entered in the registers has grown continuously.
- As early as the reporting years 2008 and 2009, more than a million annual accounts (excluding the publications provided for in § 264 and 264b of the German Commercial Code) had been filed each year with the Electronic Federal Gazette.
- The total number of annual accounts filed with the Electronic Federal Gazette currently exceeds 3 million.
- The proportion of financial statements made public is now around 90%, whereas it had only been 5% before the EHU G Law came into force.

The use of publicising financial statements
- As a result of the EHU G Law, a central body for business law publications has been set up with the Federal Gazette, which now only exists in electronic format. This initiative has led to a marked improvement in market transparency.
- The Electronic Federal Gazette has been widely accepted by users, as the online consultation figures show.
- Each month, the Electronic Federal Gazette registers more than 2.6 million consultations.
- Some 80% of these consultations, i.e. almost 2.1 million, concern annual accounts.
If that is converted into days, it means that more than 66,000 sets of annual accounts are consulted every day (including Sundays and public holidays) in the Electronic Federal Gazette alone.

If one adds to this the 29,000 or so sets of annual accounts that are consulted on the Company Register's webpages, that makes a total of around 95,000 annual accounts being looked at every day.

On an annual basis, that works out at almost 35 million sets of annual accounts. As approximately 1.1 million firms are required to publish their annual accounts, this would mean that, from a purely mathematical point of view, every company sees its annual accounts consulted more than 30 times a year. The vast majority of consultations (more than 80%) relate to small businesses, which is hardly surprising in view of the fact that very little information about small firms is otherwise available (on the Internet).


03.12.2009 – The transitional period for filing annual accounts on paper ended on 31 December 2009. Annual accounts could only be submitted to the Electronic Federal Gazette in paper format up until 31.12.2009. Since 1 January 2010, company accounts have had to be filed electronically on the following Internet address: https://publikations-plattform.de

This disclosure requirement stems from the following legal base: § 4 of the Decree on the transfer of running the Company Register and of the submission of documents to the Electronic Federal Gazette manager. Below are the terms of this provision:

- § 4 submission of documents to the Electronic Federal Gazette: The documents to be filed electronically with the Electronic Federal Gazette manager on the basis of § 325 of the Commercial Code or other provisions, which, for publication reasons, refer to § 325 of the Commercial Code, as well as on the basis of § 2 al. 2 and 3, § 9 al. 1, § 12 al. 2 or § 15 al. 1 of the Law on publicising financial statements, may alternatively be submitted in paper format until 31 December 2009.

To find out how to send in your annual accounts electronically, we suggest you consult the "Wissenwertes" (useful to know) section on the publications portal (https://publikations-plattform.de) or contact us on tel: 0800 – 1234339. We will then be able to show you just how simple and user-friendly the procedure is.

The Federal Gazette publishing team.