

Stock Holding Company (Aktiengesellschaft – AG)

The constitution of an AG requires a share capital of at least 50,000 EUR, the minimum nominal value of each share must be 2.50 EUR, any founder can subscribe such amount of shares as corresponds to his contribution. The shares are usually made out to the bearer, but may however be made out to a nominee. The shares are generally transferred by simply handing them over to the buyer. The shares can be freely transferred to any third party if the contrary is not expressly provided for in the Articles of Association.

The main advantage of the AG is the possibility of the issue of stocks – including stock options for employees – and of its shares being quoted – after a special procedure – on the stock exchange, and of securities giving access to the financial markets to raise liquidity.

On the other hand, the law gives only rather limited freedom to tailor the Articles of Association to your specific needs. The running costs of an AG are considerably higher compared to a GmbH if only because all shareholders' meetings must be notarised and a supervisory board ("Aufsichtsrat") is compulsory: obviously, the members of the Board are entitled to a remuneration.

I personally favour the AG in all cases when the founder / majority shareholder of a company wants to retire from day to day business and hand the company over to the next generation, as the segregation of powers between shareholders' meeting, supervisory board, and directors ("Vorstand", in this case) may be used as a protection of the company against both incompetent, money greedy heirs, and ageing patriarchs not really willing to hand over the reigns to the next generation and against any sort of family feuds.

However, the very independence of the Vorstand may quite rightly be regarded as a major disadvantage, by foreign investors. In fact, a part from FORD Aktiengesellschaft, there does not seem to have ever been constituted an AG by a foreign investor, the GmbH always having been chosen, instead.