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Germany's love of the 'Limited'

By Hugh Williamson

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Karin Barth, the co-founder of a Munich-based advertising business, has never visited her own headquarters, located 1,400km away in Birmingham, central England.

This is not how companies usually work in Germany's rather provincial small-business culture. Then again, the length of her possible commute to work is not the main distinguishing feature of her company, Smartising International Ltd.

The three letters rounding off her company's title are in fact the biggest difference from mainstream corporate Germany.

By choosing to register her company as a British "Ltd" rather than a "GmbH", Germany's home-grown legal model for small businesses, Ms Barth is riding a wave that has been gathering momentum for four years and is now crashing on to the once distant shores of German politics and business reform.

"We've set up a limited company using the British legal form because it's quick and inexpensive, and because we wanted a structure that travels well internationally," says the 46-year-old entrepreneur, whose company arranges mobile advertising on Smart cars.

Companies House, Britain's business registry office, gave her company number 5910224 in August, and Smartising has since recruited more than 100 Smart owners with the offer of €50-€100 a month to have their cars covered in colourful advertising slogans. Her Birmingham address listed at Companies House is run by the consultancy that helped her get started, with post forwarded on to Munich.

She finds parallels between her favourite car (she is also a Smart driver) and her chosen business model. "The Smart is neat and flexible, as is being a limited company – unlike the 'GmbH' which is "costly and cumbersome", she says.

The main appeal of a Ltd tag, she says, is that no minimum in equity is required, compared with the minimum of €25,000 (£16,900) for GmbH (Gesellschaft mit beschränkter Haftung, or limited liability company). Registration for Ltd status is quicker, taking days rather than weeks or months, and procedures to alter company statutes are less bureaucratic.

Limited companies have been popping up across Germany since 2002, following rulings by the European Court of Justice allowing cross-border use of business legal forms within the European Union.

Studies suggest more than 30,000 such German Ltds now exist. The vast majority are small retail or service companies with few staff, although a handful of larger businesses also operate under British legal forms, such as Air Berlin plc, a leading no-frills airline.

No lesser figure than chancellor Angela Merkel warned in a speech in August that every seventh limited liability company established in Germany in 2005 had the British Ltd label. "A trend we can't ignore," she said.

To avoid further damage to the country's reputation as a friendly environment for start-ups, 350 of Germany's top lawyers and judges last month discussed ways of modernising the laws for setting up a GmbH. Legislation to this effect,

drafted in May, is expected to be on the statute books in late 2007. As the justice ministry said, the law, expected to cut the initial equity requirement to €10,000, is aimed at tackling the "competitive disadvantages of the GmbH compared with legal forms such as Ltd".

The trend towards Ltds also raises broader issues. Entrepreneurs choose Ltds because of the legal rigidities and red tape that entrap many small businesses in Germany. But the boom also highlights the potential dangers and pitfalls of transferring legal forms between countries with differing business environments.

Gerd Woweries of Berlin's chamber of commerce has regular contact with entrepreneurs considering the Ltd road. "Creating a Ltd is the right way for some small companies but by no means for all of them," he says. "Also some entrepreneurs in Germany are keen on hearing about the apparent advantages [of Ltds] but not the responsibilities," he adds, such as filing annual reports to Companies House.

For Alfons Ritt, the 39-year-old owner of an internet start-up, Ltd status kept life simple. "I wanted an uncomplicated business form and I needed to have a company within 24 hours," he says, sitting among a bank of computer screens in his cramped office in suburban Munich.

He had been rushing to present official paperwork to the first clients for his company, Deutsches Stadtportal Ltd, which publishes web-based business directories for more than 60 German towns and cities.

He hit the deadline with the help of one of the many consultants in Germany specialising in promoting Ltds. That was in 2004, and since then his experience has been largely positive.

After paying the consultant an initial €500 to set up the company he decided to "keep myself out of the legal side of the business", leaving his advisor to file annual returns and accounts at the appropriate times, for a fee of about €250 a year.

Despite concentrating on running his business, Mr Ritt has faced some problems linked to his choice of legal status. "It was initially not easy to get a [German] bank account," because banks were wary about what the Ltd label would mean for the company's viability.

Jochen Hüls of Limited24, a consultancy specialising in Limited start-ups, says Mr Ritt's experience was typical. "Many banks or public authorities think something must be wrong with a company" that chooses not to take a German legal form. But fears can often be allayed by referring to the ECJ rulings and to the growing popularity of the Ltd brand, he says.

Further pitfalls await the unprepared German business person. In an unusual tradition for Germany, where regulations are typically enforced, small businesses rarely file annual financial accounts to the relevant local business authority, preferring to pay small fines rather than open their books to the public.

So it comes as a shock to Ltds that they face a large fine – and possibly being dissolved – if such accounts are not submitted punctually to Companies House, says Michael Silberberger of Go Ahead, Germany's largest Ltd start-up consultancy.

Between 30-50 per cent of Ltds in Germany fail to make such a submission, according to surveys and industry estimates, but Mr Silberberger is optimistic that this is changing. "Many more Ltds are taking the necessary reporting steps than in the past," he says.

On her part, Ms Barth is already primed to file the necessary documents to Cardiff. "I know my responsibilities," she says. Mr Ritt says he is equally diligent, but argues that, if business problems did arise, the flexibility he associates with being a Ltd would win through.

Like Ms Barth, he has never visited his company headquarters, in Wakefield, northern England, but still feels, well, thoroughly British. "If something happens, I could close down my Ltd and open another within 24 hours. That would be impossible if it were German."

Ltd VERSUS GmbH – HOW GERMANY IS FIGHTING BACK

Why would German business people turn their backs on traditional ways of establishing companies and choose to set up a British Limited instead?

Experts and entrepreneurs offer several reasons:

- Ltds only require £1 in initial capital, while a GmbH, the most common legal form for small companies in Germany, require €25,000 in initial equity
- Setting up a GmbH can take months, while a Ltd can be registered within 24 hours
- Ltd is a better known international brand, so is attractive for companies also working outside Germany
- Changes to company structures, such as the addition of new directors, are easy and inexpensive with a Ltd, but require legal fees with a GmbH.

Yet even German advocates of 'Ltd' status say it comes with risks and responsibilities. For instance, business partners may be wary, as an insolvent Ltd may have few means of paying off debts. Also, German Ltds have to file financial accounts to the UK in English – not always an easy task. In spite of these concerns, the boom in Ltds has put pressure on German politicians to make the GmbH form – used by 1m companies – more user-friendly.

- A draft law to modernise the GmbH, introduced in May, proposes reducing the minimum equity requirement to €10,000
- Other changes include steps to quicken the registration process, and to make it easier for new directors to join a company.
- Most of the business community is backing the draft law, expected to come into force in late 2007

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