



How to...

## Setting up a GmbH in Germany

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### I. Background

Anyone can establish a business in Germany - irrespective of nationality or place of residence. There is no specific investment legislation in Germany, nor is there a minimum percentage of German shareholdings (sponsorship) required for foreign entrepreneurs setting up a business. Foreign investors can choose between a variety of legal forms for conducting business in Germany.

German company law offers a suitable legal structure for every type of business. One of the most important and common corporate forms under German law is the **GmbH**. A GmbH is specifically designed to meet the requirements of small and medium-sized enterprises (often family-owned and owner-managed businesses) and limits the liability of its shareholder(s).

The GmbH combines high flexibility with relatively few obligations. It can be set up by an optional number of shareholders, whereas at least one shareholder is required. Shareholder(s) of a GmbH can be private individual(s) or legal entity(ies).

The nationality and residence of the shareholder(s) as well as the managing director(s) of a GmbH are irrelevant. Further, the place of a GmbH's business activity may be abroad - the GmbH must have a German postal address though.

Please note that a GmbH does not have any additional organs to the shareholders and the managing director(s). For example, board structure cannot be simply implied with a GmbH.

The share capital required for registering a GmbH is at least € 25.000. This capital can be contributed in cash or in kind (e.g. real estate or patents). The founding act as well as the articles of association have to be notarized by a German notary. As soon as the registration is completed, the corporation formally comes into existence.

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## II. Formation procedure

The formation procedure of a GmbH is straight forward and can be divided into the following steps:

### Step 1: Drafting of Articles of Association

The articles of association shape the identity and constitution of the GmbH. Mandatory content includes a business name, the objective of the company, registered office, share capital, shareholders and respective shares held. Due to the large scope for contractual flexibility, the GmbH is a very flexible corporation.

### Step 2: Notarization of Articles of Association

The drafting and notarization of the articles of association are usually done in one sitting by a German notary. The founding shareholder(s) adopt(s) the articles of association and appoint(s) one or more managing directors in a notarial deed. The articles of association must be signed by all founding shareholders as well as notarized.

### Step 3: Open Bank Account

After the notarization procedures, a bank account must be opened for the GmbH. Opening a bank account in Germany is very formal and can take substantial time. A bank account can be opened with a German or EU-Bank, not with a third country bank.

In addition to certain documents a signature of the managing director is required. Often this is required in its original (no digital signature allowed).

### Step 4: Payment of Share Capital

Once the articles of association have been notarized and the company bank account is opened, the share capital has to be deposited. In case of a GmbH with share capital of € 25.000, a deposition of € 12.500 in total is already sufficient for the purpose of registration with the commercial register.

Before the payment of the share capital is made, no business activities should commence to avoid any personal liability issues.

### Step 5: Registration with the Commercial Register

Before taking up commercial activities the new business has to be registered with the public commercial register ("Handelsregister") and the respective local trade office ("Gewerbeamt"). Once the required share capital has been verifiable contributed to the GmbH, the managing director(s) apply for the registration of the GmbH in the commercial register. The application is filed electronically by a notary. This application must be signed personally by all managing directors of the GmbH (a power of attorney is not possible) and accompanied by documentation pertaining to the applying GmbH.

In addition, the commercial register requires documentation verifying the existence of any parent company as well as the power of representation/attorney for persons acting on behalf of the parent. The commercial register will verify if all formation requirements have been met.

If all formation requirements have been met, the GmbH is registered and comes into existence as a separate legal entity.

### Step 6: Trade Office Registration

Before the GmbH can commence its business operations, the respective local trade office is to be notified about the planned activity. Trade office registration must be submitted at the latest on commencement of business.

The trade office usually forwards the registration to the tax authority, the regional association of professional trading associations, and the local chambers of industry and commerce ("Industrie- und Handelskammer - IHK") or the chambers of craft ("Handwerkskammer"). Chamber membership is automatic and mandatory.

Some business activities may require a permit or license. This should be clarified before the formation process is started and activities are commenced

### Step 7: Tax Registration

Before business operations can commence, it is further crucial to have a tax number and a VAT identification number (VAT ID No.).

To obtain both of these numbers, a tax registration of the newly established legal entity is required. For this purpose, a tax questionnaire is to be filed with the local tax authorities. This process usually takes several weeks and should therefore be adequately accounted for in the overall schedule for the establishment of the GmbH.

If the entity only has a mail address in Germany with no local managing director and no other substantial presence (e.g. office with staff) the German fiscal authorities will only grant a tax number for a limited taxation.

Accordingly, the country in which the managing director is present will receive a control notification from the fiscal authorities in respect to a potential management permanent establishment.

We highly recommend to have a local managing director to avoid significant tax issues.

## We are here to help.

With over 20 years of experience in guiding foreign based entities and investors into the German market, we are efficient and pro-active in assisting you in setting up your German GmbH.

Get in touch with us.

