



The GmbH in Germany

By Herfurth & Partner

Establishing a company in a foreign country can be challenging in terms of designing the legal structure and organising a streamlined and efficient incorporation process. Alliuris member firms provide corporate legal services, in particular for the formation of companies in their home country.

This article provides a brief overview of the legal form of a limited company in Germany.

GmbH

The limited liability company (GmbH) is by far the most popular form of company in Germany. It is the usual form of company for small and medium-sized companies. Since November 2008 it is also possible to found a GmbH with only 1 EUR capital. This variant of the GmbH is then called *Unternehmergeellschaft (UG)*.

Choice of seat and place of incorporation

The logo for herfurth.partner, consisting of the text "herfurth.partner" in white lowercase letters on a dark blue rectangular background.

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(Specially for strongly federal States, example: India's federal structure must be considered when choosing a location. Different States and Union Territories in India may have different laws, policies, and incentives in place.)

Shareholder

A GmbH can be founded as a one-person company as well as multi-person company. Shareholder can be a natural person or a legal entity, foreigners can also be shareholders of a GmbH.

Management

Management and representation of the GmbH are handled by one or more managing directors. The statutory model of joint representation can also be effectively changed to sole power of representation vis-à-vis third parties by the articles of association. EU-foreigners can also be managing directors, non-EU-citizens can generally be appointed managing directors if they can enter Germany at any time.

Formation

The required time for the formation of the company depends, among other, on the workload of the competent commercial court. In general, the formation of a company takes approximately 14 days. However, the registration process can take several weeks or months.

The competent commercial court examines the registration in the commercial register and usually asks the competent chamber of industry and commerce whether the name of the company is permissible. A GmbH should not commence business activities until it is entered in the commercial register. Economic activities started before the entry in the commercial register are attributed to the company registered later. However, shareholders are personally liable for any debts if the share capital is no longer fully available at the time of entry in the commercial register. In order to avoid delays in the initial registration of a GmbH and thus an increased liability risk, we offer our clients the service of acquiring a pre-established company. A company founded by us has not developed any economic activities until it has been acquired by the client.

Share capital

The minimum share capital of a GmbH is 25.000 EUR. At the time of the entry in the commercial registry, half of the share capital must be paid in.

The minimum share capital of a GmbH in the form of an UG is 1,00 EUR, at the time of the entry in the commercial registry the amount must be paid in full. The UG is not obliged to raise a higher share capital. However, if it generates profits, it must allocate 25 % to a reserve. If the reserve has grown to EUR 25,000, the shareholders can convert it into share capital and rename the UG as a GmbH.

Registration with local authorities

The newly established company must not only be registered in the commercial register, but also with local authorities. The company must therefore be registered with the competent local trade office (*Gewerbeamt*) and for specific businesses may also require approval from the competent administrative authority.

Tax registration

With the registration of the company with the relevant commercial register, the local tax office is notified of the formation of the company. The competent tax office issues the

company a tax number as soon as the company commences its business activities. At the same time, the company can also apply for a VAT identification number from the Federal Office of Finance in Sarlouis (*Bundesamt für Finanzen*).

Anti-money-laundering measures

All legal entities, including GmbHs, are obliged to positively notify the German transparency register (*Transparenzregister*) on their beneficial owners.

Foreign investment control

The German policy on foreign investment control is relatively liberal. However, in the last years, both sector-specific and general review mechanisms have been introduced to defend the country's interests. A strict sector-specific review applies to activities concerning military goods. Additionally, a review can be carried out on the acquisition of a certain percentage (10-25%, depending on the sector) of the voting rights or the assets of a German company, if strategic infrastructures or industries are involved, or if the acquisition is considered likely to affect the German public order or security, or that of any other EU member country.

Customs (Export / Import)

Companies operating in the field of import and export must apply for a customs number. The customs number is issued free of charge by the *Oberfinanzdirektion* Karlsruhe in its function as coordinating body for the automated tariff and customs processing system ATLAS (www.zoll.de).

If the company has to submit a large number of customs declarations on a regular basis, it is possible to submit customs declarations in a simplified form. The simplified procedure requires approval by the responsible main customs office (*Hauptzollamt*).

Bank account

The company can open a bank account as soon as their formation documents are notarized in the presence of a notary public. The opening of an account can take several weeks, due to anti-money-laundering provisions and control obligations.

Accounting

At the end of each fiscal year, the GmbH must prepare annual financial statements containing the profit and loss account, statement of assets (balance sheet) as of the balance sheet date and, if necessary, a management report. The bookkeeping and annual financial statements must be prepared in accordance with the principles of proper accounting (GoB). In principle, a GmbH is obliged to publish its annual financial statements in the electronic Federal Gazette (*Bundesanzeiger*). Small companies only have to publish their balance sheet in a shortened form and notes.

Formation cost

The formation costs include notary fees, court costs and publication costs. These costs amount to approx. 750 EUR. Legal advice costs for the draft of the standard formation documents as well as the managing director contract amount to approx. 2,000 EUR. In the event that individual changes to the formation documents are necessary, costs are calculated on the basis of hourly rates.

The costs for the annual financial statement are probably not more than EUR 1,000, provided that the newly founded company initially develops only minimal economic activities.

Corporate tax

Corporate income tax (Körperschaftsteuer) for GmbHs in Germany currently amounts to 15% of taxable income plus 5.5% solidarity surcharge on the amount of corporate income tax.

Trade and turnover tax

Depending on the location, the effective trade tax (Gewerbsteuer) amounts to approx. 11-18%. The regular VAT rate in Germany is currently 19%.

Staff

If necessary, we can also use our connections to recruit suitable employees or managing directors for your company.

Domiciliation service

If your new company does not yet have its own business address in the start-up phase, we offer a so-called domiciliation service (address, telephone number, etc.). We can also help you find a business center in Hannover (Regus, ecos, Pedus or others).

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