



The GmbH in Austria

By Brauneis Rechtsanwälte

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 liability company in Austria

The Gesellschaft mit beschränkter Haftung (GmbH) in Austria

The Austrian limited liability company “*Gesellschaft mit beschränkter Haftung*” (GmbH) is Austria's most popular corporate structure, particularly favored by small and medium-sized enterprises (SMEs) and international investors. Its appeal lies in the limited liability it – as a rule - grants shareholders for the GmbH's liabilities and the flexibility it provides for business operations. A GmbH is recognized as a separate legal entity, capable of owning assets, entering contracts, and conducting business independently of its owners. This document offers a detailed guide to establishing and managing a GmbH in Austria, covering relevant legal and operational aspects.

Choice of Seat and Place of Incorporation

The seat of a GmbH in Austria must be its official registered office, located within the country. This address serves as the company's legal domicile and must be listed in the Austrian Commercial Register (*Firmenbuch*). The location is significant for regulatory purposes, as it determines the jurisdiction of the local court responsible for the company's registration.



Entrepreneurs should carefully consider the strategic advantages of their chosen location. Factors such as proximity to infrastructure,

labor markets, and customers can influence the company's efficiency and success. Additionally, some regions offer tax incentives or subsidies to attract business investments, particularly in underdeveloped areas or specific industries.

Shareholders

A GmbH can be founded by one or more shareholders, who can be either natural persons or legal entities. There are no restrictions on the nationality or domicile of shareholders, making it a viable option for foreign investors. In single-member GmbHs, the sole shareholder holds all decision-making powers.

Shareholders' liability is – as a rule - limited to the amount of their contributions to the company's share capital. Their rights and obligations are defined in the articles of association (*Gesellschaftsvertrag*), which is a foundational document for the company. Major decisions, such as amendments to the articles, approval of annual accounts, and distribution of profits, are made at the general meeting (*Generalversammlung*), which represents the supreme authority of the GmbH.

Management

The operational management of a GmbH is entrusted to one or more managing directors (*Geschäftsführer*), who are appointed by the shareholders. At least one managing director must be resident within the European Economic Area (EEA) or Switzerland, ensuring regulatory compliance and effective oversight.

Managing directors are responsible for representing the company externally and managing its internal affairs. Their duties include ensuring compliance with statutory regulations, preparing financial statements, and fulfilling tax obligations. Directors are expected to act in the company's best interests and exercise due diligence in all business decisions. Failure to meet these obligations can lead to personal liability for damages caused by negligence or misconduct.

Formation

The formation of a GmbH requires drafting and notarizing its articles of association in the form of an Austrian notarial deed, which outline the company's name, the purposes for which the company is formed, share capital and the amount of capital to be contributed by the shareholder, and other key details. All founding shareholders must sign these articles in the presence of a notary. If foreign investors prefer not to travel to Austria, they can authorize a representative to establish the GmbH on their behalf, as long as this representative has been granted a notarized power of attorney.

Once the articles of association are duly signed in the form of an Austrian notarial deed, the GmbH must be registered in the Austrian Commercial Register by all managing directors. This process involves submitting a series of documents, including the articles of association, shareholder resolution on the appointment of the managing director(s), specimen signatures of managing director(s), as well as a declaration by the managing directors confirming that both the cash contributions and any contributions in kind are

available to them for disposition without restriction, and a payment confirmation by the bank. Upon successful registration, the company is issued a unique company number (*Firmenbuchnummer*), granting it full legal personality.

Share Capital

The standard minimum share capital for a GmbH is EUR 10,000, of which at least EUR 5,000 must be paid in cash at the time of incorporation.

Share capital can be contributed in cash or through non-cash assets, such as equipment, property, or intellectual property rights. Non-cash contributions must be independently valued and documented to ensure compliance with legal standards. Shares in a GmbH are registered with the Austrian Commercial Register.

Registration with Authorities

After its incorporation, a GmbH must register with the Austrian tax authorities to obtain a tax identification number (*Steuernummer*). If the company's activities are subject to value-added tax (VAT), it must also apply for a VAT number. Businesses engaging in regulated activities, such as financial services, construction, or healthcare, must obtain specific licenses from the relevant regulatory bodies. Additionally, to carry on a trade, the GmbH must apply for a trade license (*Gewerbeberechtigung*) from the competent trade authority. A "trade" is an independent, regular activity carried on with the intention of deriving an economic benefit.

Companies employing staff must register with the Austrian Social Insurance Institution (*Sozialversicherungsanstalt*), ensuring that employees are covered for health insurance, pension contributions, and unemployment benefits, and other social security entitlements. Compliance with these requirements is essential to avoid legal penalties.

Taxation

Corporate income tax (*Körperschaftsteuer*) in Austria is levied at a flat rate of 23%. Additionally, dividends distributed to shareholders are subject to a capital gains tax or withholding tax (*Kapitalertragssteuer*) of 27.5%. Austria's extensive network of double taxation treaties provides relief from double taxation, benefiting foreign investors by reducing withholding tax rates.

The standard VAT rate is 20%, applicable to most goods and services. Reduced rates of 10% or 13% apply to specific categories, such as food, books, and tourism services. Businesses are required to register for VAT if their annual turnover exceeds EUR 35,000. Compliance with transfer pricing regulations is mandatory for companies engaging in cross-border transactions.

Accounting and Reporting

A GmbH is required to maintain accurate financial records in accordance with Austrian Generally Accepted Accounting Principles (Austrian GAAP). Annual financial statements, comprising a balance sheet, profit and loss statement, and explanatory notes, must be prepared and submitted to the Commercial Register no later than nine months following the end of the respective fiscal year.

Medium and large companies are subject to mandatory audits, ensuring transparency and accountability. Smaller companies benefit from simplified reporting obligations. Non-compliance with accounting requirements can result in fines.

Anti-Money Laundering Measures

To comply with anti-money laundering regulations, Austrian GmbHs must disclose their beneficial owners in the Register of Beneficial Owners (*Wirtschaftliche Eigentümer Register*). Companies are also required to conduct due diligence on their clients and report any suspicious activities to the Financial Market Authority (FMA). Non-compliance with these regulations can lead to severe penalties.

Foreign Investment

Austria offers a stable and welcoming environment for foreign investment. Equal treatment is provided to domestic and international investors, and various incentives are available, including grants and tax breaks for investments in certain industries or regions. However, investments in strategic sectors, such as defense or telecommunications, may require government approval to ensure compliance with national security interests.

Bank Account

A corporate bank account is mandatory for conducting business operations. To open an account, the company must provide documentation, including its articles of association, and identification of directors and shareholders. Enhanced due diligence measures may apply to foreign-owned companies, particularly for compliance with anti-money laundering regulations.

Formation Expenses

The cost of forming a GmbH in Austria depends on its complexity. Expenses typically include notary fees, court registration charges, and legal advisory costs. Additional costs may arise for obtaining industry-specific licenses or employing professional auditors.

FlexKapG as an alternative to GmbH

A new type of company, the Flexible Company (Flexible Kapitalgesellschaft – FlexKapG), was introduced as a new legal business form in Austria, effective from 1 January 2024. Most of the features of the GmbH also applies to the FlexKapG. The Flexible Company has a separate legal personality, just like the GmbH. Furthermore, FlexKapG shareholders are – as a rule - not personally liable to creditors for the liabilities of the company. However, unlike the GmbH, the FlexKapG involves fewer formalities in transferring ownership of shares, and the simplified process issuing enterprise value shares makes it particularly attractive for enabling employee participation in the company's success. As a result, the FlexKapG is an especially appealing option for startups.

THE ALLIURIS GROUP

ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS

Members

- 4|5|3 Lawfirm, Barcelona/Madrid, Spain
- ATPR Sociedade de Avogados, Lisbon, Portugal
- BCO Bazán Cambré Orts, Buenos Aires, Argentina
- Brand & Partner, Moscow, Russia
- Brauneis, Vienna, Austria
- BHD Buhler Duggal & Henry LLP, New York, USA
- Bustamante Sinn, Abogados, Santiago de Chile, Chile
- Deustua Halperin, Lima, Peru
- Farthouat & Associés, Paris, France
- FDL Studio legale e tributario, Milan, Italy
- Hammurabi & Solomon Partners, New Delhi, India
- Herfurth & Partner, Hanover, Germany
- Hristova Lawfirm, Sofia, Bulgaria
- Karytinis Partners, Athens, Greece
- Laytons ETL, London, UK
- LEXTRUST Avocats, Luxemburg, Luxemburg
- Steenaert, Utrecht, Netherlands
- Muheim, Zug, Switzerland
- Nyborg & Rørdam, Copenhagen, Denmark
- PNST Pacheco Neto Sanden Teisseire, Sao Paulo, Brazil
- Saône Rhône, Cabinet Juridique, Lyon, France
- Yamaner & Yamaner, Istanbul, Turkey

Imprint

<p><i>Contributed by / Authors</i></p> <p>Samy Ali Brauneis Rechtsanwälte Vienna https://www.brauneis.law/en</p> <p>All information in this publication is provided to the best of our knowledge and does not constitute legal advice. Neither Alluris nor Brauneis Rechtsanwälte assume any liability for the provided information, except in cases of intent or gross negligence. Reproduction, including excerpts, requires prior permission from the editors.</p>	<p><i>Published by</i></p> <p>ALLIURIS A.S.B.L. Alliance of International Business Lawyers Avenue des Arts 56, B-1000 Brussels / Belgium</p> <p><i>Editors</i></p> <p>Chief editor (responsible): Ulrich Herfurth</p> <p><i>Management</i></p> <p>ALLIURIS A.S.B.L. Luisenstr. 5 D-30159 Hannover Fon ++49 511 30756-0 Fax ++49 511 30756-10 Mail info@alluris.org Web www.alluris.org</p>
---	--