

# ESTABLISHING OF AN LLC ("GmbH")

Learn more about the most commonly used legal form



## Overview:

- Legal form – GmbH
- Registration of a GmbH
- Shareholders of a GmbH
- Company name of the GmbH
- Registered office of the company
- Share capital of the company
- Opening of bank accounts
- Management and representation
- Articles of association

When founding a company, the first question is which legal form to choose. The most common legal form in Germany is the limited liability company (“GmbH”). This guide is intended to provide an initial overview of the key questions regarding company formation, especially the formation of a GmbH. Despite careful preparation, this guide does not replace legal advice.

## LEGAL FORM – GMBH

A limited liability company – GmbH – is an independent legal entity. It may engage in any lawful activity. The shareholders are only liable for the company’s debts up to the amount of their contributions.

## REGISTRATION OF A GMBH

A GmbH is considered registered upon its entry into the commercial register. Prior to registration, a “pre-GmbH” can operate in legal transactions. However, it is important to note that the shareholders are personally liable with their entire assets for the liabilities of the pre-GmbH before it is officially registered.

After entry into the commercial register, the company receives an HRB number. The tax authority will issue a tax number shortly afterward. A company bank account is usually opened before the notarization of the formation.

## SHAREHOLDERS OF A GMBH

There is no minimum or maximum number of shareholders in a GmbH. Shareholders are liable up to the amount of their capital contributions. Subsidiary liability may also arise, especially in cases involving criminal conduct.

## COMPANY NAME OF THE GMBH

The company name must be determined at the time of formation. Certain words, official titles, or their derivatives are subject to approval. The use of city names may also require approval and involve fees. Furthermore, the company name may not be misleading or cause confusion about the company’s commercial status.

## REGISTERED OFFICE OF THE COMPANY

Every company must have a registered, legally valid address. This address must be provided at the time of incorporation. It serves as the primary contact address for authorities, especially the tax office. Without a valid business address, the notary cannot file for registration. Both the tax authorities and banks handle this requirement strictly.

The legal address may also be located at the shareholder’s residence. This location also determines the applicable trade tax rate, which varies between municipalities.

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## SHARE CAPITAL OF THE COMPANY

The minimum share capital for a GmbH is EUR 25,000. This can be contributed either in cash or in kind. At least one-quarter of the cash contribution must be paid in. However, to register the company, at least EUR 12,500 must be deposited into a business bank account. Without proof of this deposit, the notary will not submit the registration application to the commercial register. Capital contributions in kind must be documented in a formation report. The commercial register may require a valuation report from an expert if there is doubt about the value of the assets, which can increase the overall formation costs.

## OPENING OF BANK ACCOUNTS

Before the notary submits the registration documents to the commercial register, the shareholders must provide proof that the share capital has been deposited, if it is a cash contribution.

For this, an account must be opened with a German or EU bank. As mentioned, at least EUR 12,500 must be deposited to receive confirmation from the bank, which must then be presented to the notary for registration.

It is possible to assign multiple authorized signatories at the bank, who can either act independently or jointly. The four-eyes principle provides an effective control mechanism over company finances.

If two signatories are registered, the same rule will apply to online banking. This means that transfers and document signings in the online system will require two electronic signatures.

This regulation significantly improves financial oversight by shareholders or a foreign parent company over the subsidiary.

## MANAGEMENT AND REPRESENTATION

The required bodies of a GmbH are:

- Shareholders' meeting
- Managing director(s)
- Supervisory board (mandatory for companies with more than 500 employees)

Any natural person who is legally competent (at least 18 years old) can be appointed as managing director. Non-EU citizens can also be appointed without requiring a work permit or residence in Germany/EU, provided they are also shareholders of the GmbH.

A simple majority of shareholder votes is sufficient to appoint a managing director, unless otherwise specified in the articles of association. However, registration in the commercial register requires the managing director's notarized signature.

The managing director is responsible for day-to-day operations and has the following duties, among others:

- Convening shareholders' meetings
- Protecting share capital from unauthorized payments
- Preventing the company from acquiring its own shares unlawfully
- Maintaining accounting records, preparing annual financial statements and management reports
- Providing information to shareholders
- Registering changes in the commercial register
- Filing for insolvency within three weeks of becoming insolvent or over-indebted

In the event of legal violations, the managing director may be held personally liable. Control mechanisms such as the four-eyes principle can be implemented. There is no legal limit to the number of managing directors.

Internal restrictions on the managing director's authority may be defined in the articles of association, shareholder resolutions, or service contracts. However, according to § 37 para. 2 GmbHG, such restrictions are ineffective against third parties. If a managing director exceeds their authority, they may be held liable to the company for damages.

If the managing director is also a shareholder with economic control, they are considered self-employed (not an employee). Typically, a service contract is used. An external managing director (without ownership) can be employed under a standard employment contract and is subject to labor and social security law.

However, there is no general protection against dismissal for managing directors, especially those who are not shareholders. Dismissal can be decided at any time by shareholder resolution, often with compensation.

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## ARTICLES OF ASSOCIATION

To establish a GmbH, the notary requires the articles of association, also called the partnership agreement. This document governs key aspects of the company and must include all legally required information. There are two options for preparing the articles.

**Option 1:** Using a standardized model protocol (template) provided by the notary. This option saves time and money but does not allow for any modifications or additional clauses.

**Option 2:** A customized, notarized agreement. This allows full flexibility within legal limits. It is mandatory if there are more than three shareholders. In addition to the required details, the articles may include:

- Profit distribution rules
- Conditions for shareholder entry/exit and share transfers
- Multiple managing directors
- Prohibition of self-dealing
- List of transactions requiring shareholder approval, and more

**Minimum legal content** in the articles of association includes:

- Company name, including legal form
- Registered office
- Company's business purpose, as recorded in the commercial register
- Share capital
- Shareholder details (name, birthdate, residence)
- Shareholder contributions and ownership stakes
- Management and representation rules

## CONTACT

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### Disclaimer

This guide has been prepared to the best of our knowledge and is intended for general orientation regarding the formation of a GmbH. It does not constitute legal advice and cannot replace comprehensive legal consultation. No guarantee is given, and no claim to completeness is made.