

## ***How to incorporate a German Limited (GmbH)***

### ***A basic Guideline***

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#### **I. Minimum Share Capital and required Documents**

The minimum share capital for a GmbH is 25,000 Euros. The formation of a German “Gesellschaft mit beschränkter Haftung” (GmbH) requires the establishment of Articles of Association before a German notary. The notarisation and the appointment of the first director (Geschäftsführer) are recorded in a Memorandum of Incorporation (MoI), to which the Articles of Association (AoA) are attached. Then, an application for registration of the company in the Commercial Register (Handelsregister) must be made to the Local Court (Amtsgericht), where the company’s registered office is located. The company becomes effective only once it has been registered, which usually takes about one to three weeks. In the period between notarial formation and registration in the Commercial Register, business activities may already be undertaken in the name of the company. However, during this phase (after formation but before registration) the individuals acting in the name of the company are personally liable.

#### **II. Acting from abroad**

In case the founder does not wish to appear before a German notary in person, there are basically two options:

- a) A German legal counsel may act under power of attorney on the (future) shareholders behalf. Such power of attorney must be signed for and on behalf of the grantor (the person or company wishing to establish the German GmbH) before a notary public or similar authority. The signature and the signatory’s authority to sign on behalf of the grantor must then be certified by a notary public. The notary public’s signature must then be authenticated by Apostille in order to evidence the legalisation of the notary’s signature for use of the notarised document abroad. This procedure is based on the convention abolishing the requirement of legalisation for foreign public documents signed

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Partnership under German  
Law, registered at the  
Commercial Register at  
the Local Court Munich,  
Register Nr. 438

in The Hague on 05 October 1961. The three documents (Power of Attorney, Certificate of Notary Public and Apostille) should be inseparably bound together by e.g. ribbon and seal of the notary.

Furthermore, in case the founder is a company, a Secretary's Certificate must be completed and signed by the Company Secretary of the founding company in order to evidence the existence of the founding company (also a copy of the company's certificate of incorporation should be attached), that it is entitled to subscribe to shares in a German GmbH and that the signatory of the Power of Attorney is entitled to sign the Power of Attorney on behalf of the founding company. The Secretary's Certificate must also be sworn to and subscribed before a notary public, whose signature must be authenticated by Apostille. Again, these documents (Secretary's Certificate, Notary's Certification and Apostille) must be inseparably bound together.

The Memorandum of Incorporation (the formation document) is then signed by the German legal counsel on behalf of the founding person or company under the Power of Attorney. Articles of Association (Satzung) of the GmbH must be attached to the Memorandum of Incorporation.

A basic example of such a Satzung (in German and English language) is published [here](#).

- b) The founder asks the German legal counsel or another trusted person in Germany to found the GmbH as a trustee for the founder. This means that the trustee incorporates the GmbH in his own name but is obligated to follow any and all instructions of the trustor. At a later time (when the trustor has time to come to Germany) the shares can then be transferred to the trustor. This is the simpler solution because it spares all parties involved the hassle of the legalization procedures. But, of course, it does involve some risk for the the trustor because the shares are initially in the name of the trustee.

Please note: The person designated to be the first managing director must also appear in person before the notary (see section IV below).

### III. Appointment of the first Managing Director(s)

The founding process requires a notarial instruction letter from a German notary to be addressed to the GmbH's first director (who is appointed in the Memorandum of Incorporation).

German law requires that the (first) director is advised in person by a notary of certain legal provisions pursuant to which persons who have been convicted of certain bankruptcy crimes or who have been forbidden by administrative action to exercise certain trades are barred from acting as director of a German GmbH.

### IV. Commercial Register

Finally, the newly founded GmbH must apply to the Commercial Register for registration of the incorporation of the GmbH, the appointment of its first director and a list of shareholders of the GmbH. The Commercial Register is kept by the respective local court where the GmbH has its legal seat.

The application includes a section in which the newly appointed director must give a specimen of his/her signature for deposit with the Commercial Register. This document must be signed by the newly appointed director personally in the presence of a notary public. It may not be signed by anyone else under power of attorney because it contains certain assurances to be given by the director personally regarding his/her eligibility to be a director of a German GmbH. The notary public should then attach a separate sheet on which he certifies that the director's signature has been made in his presence.

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For further information and assistance please contact Graf & Partners, Munich, Germany, [www.grafpartner.com](http://www.grafpartner.com), attention of Mr. Bernhard Schmeilzl, LL.M. (Leicester), [info@grafpartner.com](mailto:info@grafpartner.com)

Additional material on German law and the German legal system is available [here](#)