

FAQ regarding the formation of a German GmbH

1. What data are required to incorporate a German GmbH?

In order to incorporate a German GmbH, German corporate law requires several conditions fulfilled. The crucial details that founders of a GmbH need to fulfill are:

- Proposed name and place of company's business
- Proposed subject of company
- Shareholders' name and address and their proposed share at capital
- Share capital of at least 25.000 Euro. At least 12.500 Euro of the share capital need to be paid in at time of notarization on open bank German account. If company shall have a higher share capital, please specify.
- Managing director(s) shall be named and need to appear for notarization
- Managing director shall be member of a EC-state or resident in one of EC-states
- After notarization GmbH will be registered at relevant Court and financial authorities

2. What is the process of incorporating a GmbH like?

- Step 1: After you mandate our law firm to incorporate company under German law, you send us the required data, namely
- a) Proposed name of the company
 - b) Proposed subject of company
 - c) Names of shareholder(s) and director(s) and copy of passports
 - d) Proposed share at capital
 - e) you inform us whether you wish to place your company's business at our premises and whether you wish us to act as (first) managing director (see Q5)
- Step 2: We ask a public notary in Regensburg to prepare the necessary documents for incorporation in German and English, which are
- a) articles of association
 - b) shareholder's resolution on appointment of managing director
 - c) Registration to the competent local court – trade registrar
- Step 3: We arrange with the bank of your choice to open a company bank account
- Step 4: We arrange an appointment at public notary and the bank at the date you choose
- Step 5: Upon your arrival the necessary documents will be notarized in your presence. Public notary will read and notarize the above mentioned documents (see step 2) and notice the managing directors of certain legal provisions.
- Step 6: Immediately after notarization, shareholders need to pay in capital. Therefore, shareholders will have an appointment at the bank of your choice and arrange payments
- Step 7: As soon as the capital is paid in, the bank will inform the public notary who will then arrange registration at the local competent court.
- Step 8: After 2-4 weeks, company will be registered.
- Step 9: Company still needs to be named to financial authorities.

3. What is the timescale?

Depending on the shareholder's speed, steps 1 to 4 can be arranged in about 10 days. Notarization and banking will happen on the same day while you are present in Germany. Further steps 7 to 9 will take between 2-8 weeks, depending on the court.

4. Do the shareholders need to appear in person in Germany in order to incorporate a German GmbH?

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 behalf of the future shareholders. 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 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.

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 trustor because the shares are initially in the name of the trustee.

5. Do managing director(s) need to appear in person?

Yes, managing director of the GmbH need to appear in person. The reason is that 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.

6. What personal documents are needed?

The founding shareholder(s) and director(s) of the company need to bring their passport for notarization and opening of bank account. A copy of the passport is already needed in advance to prepare the opening of the bank account.

7. When can the company start its business?

Company can start its business as soon as the articles are notarized. However, the effect of limited liability occurs only upon registration of the company, i.e. round 2-4 weeks after notarization. Until then, the persons acting for the company can be held liable.

8. What is included in the incorporation package that Graf & Partner offer?

The incorporation package includes comprehensive assistance in the incorporation process. Graf & Partner acts as bilingual contact person with the public notary, the bank and further authorities, before, during and after notarization.

Our law firm discusses the terms of the necessary legal documents with the public notary. The documents for opening a bank account are – like in the UK – various and need careful handling. Graf & Partner arranges appointments with the public notary and the bank and assists you also on the day of your presence in Germany.

Beyond, Graf & Partner offers to provide one of the director(s) in case that company needs so. Of course, the director will step down as soon as company can provide at least one director itself.

Prices of the incorporation package vary, depending on the scope of services. The minimum charge will be **750 Euros** (plus VAT where applicable). This is excluding any third party charges (like notary fees, court fees and commercial register charges) and disbursements.

If you wish to mandate us please contact mail@grafpartner.com